IN THE

Supreme Court of the United States

October Term, 1960

No. 60

PAUL POE ET AL.,

Appellants

vs.

ABRAHAM S. ULLMAN, STATE'S ATTORNEY

Appellee

JANE DOE

Appellant

vs.

ABRAHAM S. ULLMAN, STATE'S ATTORNEY

Appellee

No. 61

C. LEE BUXTON

Appellant

vs.

ABRAHAM S. ULLMAN, STATE'S ATTORNEY

Appellee

On Appeal from the Supreme Court of Errors of Connecticut

MOTION FOR LEAVE TO FILE A BRIEF WITH BRIEF AND APPENDICES AS *AMICUS CURIAE* FOR THE PLANNED PARENTHOOD FEDERATION OF AMERICA, INC.

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AUTHORITIES CITED

Cases:

	PAGE
Brown v. Board of Education of Topeka, 347 U. S. 483 (1954)	13
Butler v. Michigan, 352 U. S. 380 (1957)	46
Coleman v. Wilson, 85 N. J. L. 263, 88 A. 1059 (1913)	25
Commonwealth v. Corbett, 307 Mass. 7, 29 N. E. 2d 151 (1940)	50
Commonwealth v. Werlinsky, 307 Mass. 608, 29 N. E. 2d 150 (1940)	50
Consumers Union of United States v. Walker, 145 F. 2d 33 (D. C. Cir. 1944)	38
Craig v. Chambers, 17 Ohio State 253 (1867)	25
Engel v. O'Malley, 219 U. S. 128 (1908)	46
James Everards Breweries v. Day, 265 U. S. 545 (1924)	21, 22
Jacobson v. Massachusetts, 197 U. S. 11 (1905)	21, 47
Kelly v. Carroll, 36 Wash. 2d 482, 219 P. 2d 79 (1950), *cert. den.* 340 U. S. 892 (1950)	25, 26
Lambert v. Yellowly, 272 U. S. 581 (1926)	21, 22
Malinski v. New York, 324 U. S. 401 (1945), concurring opinion of Frankfurter, J.	52
Nebbia v. New York, 291 U. S. 502 (1934)	12
Norman & Young v. Hartford Fire Insurance Co., 282 U. S. 251 (1931)	9

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Roth v. United States, 354 U. S. 476 (1957) 42

Schneider v. Town of Irvington, 308 U. S. 147 (1939) 46
Skinner v. Oklahoma, 316 U. S. 534 (1942) 48, 51
Skinner v. Oklahoma, 316 U. S. 534 (1942), concurring opinion of Stone, C.J. 10, 22, 52
Smith v. California, 361 U. S. 147 (1959), separate opinions of Frankfurter and Harlan, J. J. 27
State v. Nelson, 126 Conn. 412, 26 A. 2d 582 (1940) 13, 37
Stoll v. Balazs, 32 Ohio App. 117, 167 N. E. 522 (1929) 25
Sweezy v. New Hampshire, 354 U. S. 234 (1957) 52

Tileston v. Ullman, 129 Conn. 84, 26 A. 2d 582 (1942) 13, 41
Tileston v. Ullman, 318 U. S. 44 (1943) 19

United States v. Nicholas, 97 F. 2d 510 (2d Cir. 1938) 38
United States v. One Package, 86 F. 2d 737 (2d Cir. 1936) 38
United States v. 31 Photographs, 156 F. Supp. 350 (S. D. N. Y., 1957) 26

Walden v. Jones, 289 Ky. 395, 158 S. W. 2d 609 (1942) 24, 25
Williamson v. Lee Optical Co., 348 U. S. 486 (1955) 10

Youngs Rubber Co. v. C. I. Lee & Co., 45 F. 2d 103 (2d Cir. 1930) 38

Texts, Articles and Periodicals:

PAGE

American Journal of Public Health, Vol. 29, No. 3 (March 1939) 39

American Journal of Public Health, Vol. 49, No. 8 (August 1959) 39

American Journal of Public Health, Vol. 49, No. 12 (Dec. 1959) 41

Bromley, B. B., Birth Control, 110 Journal of the American Medical Assn. 257 (1938) 36

Bulletin of New York Academy of Medicine (October 1946) 18

Calderone ed., Abortion in the United States (1958) 39, 49

C.B.S. Reports, The Population Explosion, statement by Pike, James A. (Rev.), (January 1960) 41

Connell, Francis J., Birth Control, the Case for the Catholic 164 Atlantic Monthly 468 (1939) 35

Council on Drugs, American Medical Association, New and Non-Official Drugs (1960) 28

Decker and Decker, Practical Office Gynecology (1956) 36

Dickinson, Robert L., Techniques of Conception Control (3rd edition, 1950) 19, 23, 29, 36

The Family in Contemporary Society (S.P.C.K. 1958) 30, 31

Flock, Snediker and Rock, The Contraceptive Safe Period, 223 New England Journal of Medicine 1005 (1940) 36

PAGE

Freedman, Whelpton and Campbell, Family Planning, Sterility and Population Growth (1959) 44

Greenhill, J. P., Office Gynecology (7th edition 1959) 28

Guttmacher, Alan F., Conception Control and the Medical Profession, Human Fertility, Vol. 12, No. 1 (March 1947) 20, 42

Howkins, John, Shaw's Textbook of Gynecology (7th Edition 1956) 28

Journal of the American Medical Association, Vol. 108, p. 2217 (1937) 17

Journal of the American Medical Association, Special Edition (June 1958) 24

Kenny, John P., Principles of Medical Ethics (1952) 29

The Lambeth Conference 1958 (1958) 31, 32

Latz, Leo J., The Rhythm (6th edition 1940) 35

New York Herald Tribune, February 18, 1960 43

New York Times, August 12, 1958 35

New York Times, August 31, 1958 21

New York Times, January 16, 1960 41

New York Times, January 24, 1960 44

New York Times, May 10, 1960 28

Planned Parenthood Federation of America, Inc., The Churches Speak Up On Birth Control (1960) 34, 36

Planned Parenthood Federation of America, Inc., Clergymen's National Advisory Committee Statement, The Ethics of Family Planning (1960) 32

PAGE

Planned Parenthood Federation of America, Simple Methods of Contraception—An Assessment of their Medical, Moral and Social Implications (1958) 20

Planned Parenthood Federation of America, Inc., Directory of Clinic Services (1957) 39

Planned Parenthood News, (Fall, 1958) 20, 21

Proceedings of the Connecticut State Medical Society (1932) 17, 18

Report on Planned Parenthood Services in New York City (1946) 20

Report of Committee on Public Health Relations of the New York Academy of Medicine (1946) 20

Restatement, Torts §299 (d) (f) 24

Rock, John, Medical and Biological Aspects of Contraception, Clinics, Vol. 1, (April 1943) 42

Ryan, J. A., The Moral Aspects of Periodic Continence, The Ecclesiastic Review, LXXXIX, (1938) 36

Social Action, Vol. 26, No. 8, (April, 1960) 33

Stallworthy, et al, Problems of Fertility in General Practice (1953) 28

Stone, Abraham—The Teaching of Contraception in Medical Schools, Human Fertility, Vol. 7, No. 4, (August 1942) 19

Stone, Abraham & Himes, Norman E., A Practical Guide to Birth Control Methods (1958) 29

The Grail, (Fall 1958) 37

Tietze, Christopher, The Condom as a Contraceptive (1960) 29

Yahraes, Herbert, Planning Your Family, Public Affairs Pamphlet No. 136 (1953) 43

PAGE

Constitution and Statutes:

United States—

Constitution: Amendment XIV — Passim
28 U. S. C. §1257 (2) — 7

Connecticut—

General Statutes of Connecticut (Revision of 1958)

Sections 17, 18, 19 — 49
Section 53-29 — 49
Section 53-32 — 7, 8
Section 54-196 — 7, 8

Miscellaneous:

Circular to District Offices, Federal Security Agency, United States Public Health Service, (February 1942) — 40

In the Matter of Scientific Instruments, Inc., Fed. Trade Comm., File No. 1-10400 (1940) — 37

In the Matter of Edwin Ries, doing business as The Health Calendar Company, Fed. Trade Comm., Stip. No. 02656 (1940) — 37

List C, Supplementary Order No. M 156 as Amended, War Production Board (January 1942) — 41

Memorandum from Zad Leavy (Deputy District Attorney) to Joseph B. Brach, Jr. (President Association of Deputy District Attorneys, Los Angeles County) re "Proposed Legislation Amending Abortion Statutes" (May 2, 1960) — 50

Morality in Marriage, Pope Pius XII Address to the National Congress of the Family Front, The Catholic Mind (May 1952) — 35

PAGE

Report to the President on Economic Assistance Programs and Administration, (July 13, 1959) 43

Report of the Royal Commission on Population, H.M.S.O. (1949) 49

Highlights National Council of the Protestant Episcopal Church, Press Release (1959) 32

Committee on State of the Church (General Conference of the Methodist Church) Report No. 7, (May, 1960) 33

Resolutions passed by the 45th General Assembly, Union of American Hebrew Congregations (1959) 34

Possible Non-military Scientific Developments and their Potential Impact on Foreign Policy Problems of the United States, The Stanford Research Institute report prepared for the Senate Foreign Relations Committee (1959) 45

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On Appeal from the Supreme Court of Errors of Connecticut

MOTION FOR LEAVE TO FILE A BRIEF AS *Amicus Curiae*

Planned Parenthood Federation of America, Inc., hereinafter called "Federation" hereby respectfully moves for leave to file a brief annexed hereto as *amicus curiae* in this case.

Appellants Doe, the Poes and Buxton have consented in writing to the filing of Federation's *amicus* brief. Appellee Ullman has declined to consent thereto. Federation is a membership corporation originally organized in 1922 and existing under the laws of the State of New York. Its purposes are, among others, as stated in its presently effective Certificate of Incorporation: "To undertake, support and promote investigation and scientific research touching upon and embracing the sociological, biological, medical and economic aspects of marriage, procreation, maternal health and family betterment, and to collect, circulate, evaluate and disseminate information concerning said subjects of investigation and scientific research and matters related thereto."

Federation consists of a central coordinating body plus 96 state and local affiliates operating in 28 states and the District of Columbia, all sponsoring medical services or doing research in the field of contraception. Federation's affiliate in Connecticut, the Planned Parenthood League of Connecticut, is restricted in its operations by the laws herein challenged. Federation is an active member of the International Planned Parenthood Federation which links medical research and services in conception control in 26 countries and cooperates with the United States and other governments. Federation, and most of its affiliates have tax exemption under §501(c)(3) of the United States Internal Revenue Code of 1959.

Through Federation's Medical, Biological Research and Social Research Committees, its affiliates receive guidance in the areas of medically directed child spacing, treatment of infertility problems and education for marriage and parenthood. Each of the affiliates functions under strict

medical standards promulgated by the National Medical Committee in conjunction with local medical advisory committees, all such committees consisting exclusively of physicians.

Many of Federation's affiliates operate in coöperation with local public health facilities. The affiliates are also teaching centers for physicians, nurses and social workers and provide for referral services to qualified medical specialists.

By means of its various committees, Federation operates as a clearing house for information and services relating to conception control. It formulates nation-wide medical and clinical standards and acts as an agency for public and professional education in this field. Its medical director and other consultants confer with medical school faculties and local committees in relation to teaching techniques, formation of clinics and the like.

Federation works with medical, social work, religious and professional organizations throughout the country. It is a member of the National Health Council, the American Public Health Association, and the Council of National Organizations of the Adult Education Association. It is affiliated with the National Conference on Social Welfare and is listed as a "voluntary agency of medical interest" in the American Medical Association's Handbook for Medical Societies and Individual Physicians. Federation sponsors research by scientists in leading universities and laboratories and guides and assists in the clinical testing of improved contraceptive methods. It organizes conferences for experts in the natural and social sciences and it collates information and research and fosters publication of articles in scientific journals. It is, in short, the national health agency in the field of contraception.

The laws involved in these cases as interpreted by the court below adversely affect Federation both directly and indirectly. Their direct result is to make it impossible in Connecticut for Federation and its affiliate there to render the health services which are rendered by *amicus* elsewhere. Their indirect effect is to threaten the existence and functioning of Federation and its affiliates throughout the country. If this Court affirms the decision below, there will be no constitutional obstacle to the passage of similar laws by other jurisdictions which would vitally affect the health services for which Federation and its affiliates were organized and are operating.

If the legislature of the State of Connecticut had decided for whatever reason to prohibit the prescription by physicians of the Salk vaccine, this would pose a very serious problem for a doctor and his patients in the State of Connecticut. But such a prohibition would, in addition, present a major threat and a major question of constitutional law for the national health agency functioning in the area of control of infantile paralysis and for the nation as a whole. In all fields of medicine, research and clinical practice transcend state boundary lines as indeed do the health conditions which organizations like Federation are founded to study and control. If medical practice in one specified field is prohibited by one state, that prohibition jeopardizes the activities of physicians and of health agencies everywhere in that field. Moreover, a national voluntary health organization composed of local groups, like Federation, is of necessity dependent upon and nourished by what happens in the field of its special endeavors throughout the country.

Federation is in a unique position to supply this Court with an overall picture of the problem herein involved on a local, national and international scale, a picture which is directly relevant to the determination of these cases.

Respectfully submitted,

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BRIEF AS *AMICUS CURIAE* FOR THE PLANNED PARENTHOOD FEDERATION OF AMERICA, INC.

Opinion Below

The opinion of the Supreme Court of Errors of Connecticut was rendered on December 8th, 1959 and is reported in 147 Conn. 48, 156 A. 2d 508 and appears in the Record at pp. 25-35.

Jurisdiction

The jurisdiction of this Court is invoked under 28 U. S. C. 1257 (2) in that the cause involves the validity of state statutes (Sections 53-32 and 54-196 General Statutes of Connecticut, Revision of 1958) challenged as imposing unconstitutional deprivations of appellants' life, liberty and property, under the due process clause of the Fourteenth Amendment to the Constitution of the United States, the decision below having upheld their validity.

Statutes Involved

(1) Section 53-32, General Statutes of Connecticut, Revision of 1958:

> "Use of drugs or instruments to prevent conception. Any person who uses any drug, medicinal article or instrument for the purpose of preventing conception shall be fined not less than fifty dollars or imprisoned not less than sixty days nor more than one year or be both fined and imprisoned."

(2) Section 54-196, General Statutes of Connecticut, Revision of 1958:

> "Accessories. Any person who assists, abets, counsels, causes, hires or commands another to commit any offense may be prosecuted and punished as if he were the principal offender."

Questions Presented

(1) Whether Sections 53-32 and 54-196, General Statutes of Connecticut (Revision of 1958) as construed below, deprive appellant Buxton of liberty and property without due process of law, by forbidding him to utilize drugs, medicinal articles and instruments which in his judgment are the best and safest medical means for the treatment of his patients, the other appellants herein.

(2) Whether Sections 53-32 and 54-196 General Statutes of Connecticut (Revision of 1958), as construed below deprive appellant Doe and the appellants Poe of life and liberty without dueprocess of law, by forbidding them to use drugs, medicinal articles or instruments sought to be prescribed for them by their physician, the appellant, Buxton for the prevention of conception and thereby subjecting them to serious risk of loss of life, liberty and health.

Statement of the Case

Amicus respectfully refers the Court to the statement of the case incorporated in the brief for the appellants.

Interest of Federation as *Amicus Curiae*

We have in the accompanying notice of motion set forth the pertinent facts concerning the Planned Parenthood Federation of America and the reasons why we believe acceptance by this Court of this brief submitted on

behalf of Federation as *amicus curiae* is appropriate to consideration of the question of reasonableness which is at the core of these cases. We believe that the litigants here involved will not cover the material presented herein.

Summary of Argument

The Connecticut laws, as construed and applied below, prohibit physicians from prescribing, and patients from using drugs, medicinal articles or instruments for the prevention of conception, regardless of the health needs of the patients and the professional judgment of the physician. No exception for any purpose whatsoever is permitted: the laws carry criminal penalties for any married citizen of Connecticut who uses contraceptives even for compelling reasons of health and on medical advice; they threaten with criminal conviction any physician whose professional judgment leads him to prescribe such remedies.

Neither the legislative record, the record of these proceedings nor the opinion of the Supreme Court of Errors of Connecticut supplies a rationale for these stringent prohibitions.

Since "underlying questions of fact" condition the constitutionality of the Connecticut laws [*O'Gorman & Young Hartford Fire Insurance Co.*, 282 U. S. 251 (1931)], this Federation will in this brief seek to demonstrate that the facts exist which can sustain this legislation. Although we recognize that there is a presumption of the existence of such a state of facts "there are limits to the extent to which the presumption of constitutionality can

be pressed" especially where as here life and liberty are at stake. [See *Skinner* v. *Oklahoma*, 316 U. S. 534, 544 (1942) concurring opinion of Chief Justice Stone; *cf. Williamson* v. *Lee Optical Co.*, 348 U. S. 486, 487 (1955)]. *Amicus* Federation submits that the rigid prohibitions imposed by the Connecticut statutes cannot meet any test of due process heretofore enunciated by this Court.

As the national health agency in the field of conception control, *amicus* has assembled herein and in the Appendices hereto facts of common knowledge which, it is submitted, show that:

(a) There is no reasonable basis for the Connecticut laws in the facts of record or in the decision below;

(b) There is no reasonable basis for the Connecticut laws in medical science which in substantial unanimity regards as medically necessary prescription of drugs, medicinal articles and instruments in cases such as those at bar and which considers that there is no reasonable alternative to such prescription;

(c) There is no reasonable basis for the Connecticut laws in the tenets of any religious group today; on the contrary, all religious groups sanction and many call for conception control in cases such as those at bar;

(d) There is no reasonable basis for the Connecticut laws in contemporary community mores which likewise sanction, if indeed, they do not demand, the prescription of drugs, medicinal articles and instruments in cases such as those at bar; and

(e) There is no reasonable basis for the Connecticut laws because they are not restricted to the accom-

plishment of the supposed legislative objectives; because they cause severe deprivations of basic rights; and because in any event in their operation they cannot possibly tend toward the achievement of the supposed legislative objectives.

POINT I

There is no reasonable basis in the facts of record or in the decision below for the application of the challenged statutes to the appellants.

The law of Connecticut, as authoritatively construed below by the Supreme Court of Errors of that state, results on the conceded facts in the following: the physical condition of the appellant Doe, a married woman living with her husband and of the appellants Poe, a married couple, require them to avoid conception, but the appellant Dr. Buxton (a physician expert in the field of obstetrics and gynecology) is prevented by the statutes herein challenged from prescribing for them drugs, medicinal articles or instruments conceded by the state and by the Court below to be "the best and safest preventive measure" which medical science can offer (R. 29).

On this record, in other words, married citizens of the state of Connecticut, in desperate need of treatment which the medical profession concededly has available, whose happiness, health and very lives are at stake, are barred from access to such treatment. And physicians, who are obliged morally, ethically and indeed by legal standards ordinarily applicable (see Point II pp. 24-27 below), to use the best medical means available for the treatment of their

patients, are prevented by the challenged laws from so doing.

Amicus Planned Parenthood Federation of America Inc. urges that these laws, leading to these results are unconstitutional insofar as they affect the appellants here and others similarly situated. We propose in this brief to demonstrate the absence of any reasonable basis for these laws; whether they be regarded from the standpoint of the deprivation of the liberty and property of appellant Dr. Buxton, or from the standpoint of the deprivation of life and liberty of appellants Doe and the Poes. As to all of the appellants, the basic question presented is whether there is any reasonable basis for the admitted impact of the laws upon them.[1]

This Court has always made clear, even with reference to the less stringent standards of due process applicable to regulation of business and industrial activity (as opposed to such basic human rights as are here involved) that:

> "[a] law shall not be unreasonable, arbitrary or capricious, and * * * the means selected shall have a real and substantial relation to the object sought to be attained." *Nebbia* v. *New York*, 291 U. S. 502, 525 (1934).

It therefore becomes pertinent to inquire whether the challenged legislation is directed to objectives within the competence of the legislature, and the extent, if any, to which the laws serve any such purpose.

1. The instant cases are to be distinguished from the earlier case of Tileston v. Ullman, 318 US 44 (1943) in that here patients (Doe and the Poes) seek to protect their lives and liberty, and the doctor (Buxton) seeks to protect his liberty and property.

The record is bare of any legislative statement of the object sought to be attained by these laws. When first enacted, in 1879, the prohibition against use of drugs, medicines or instruments for the prevention of conception was an integral part of an overall law against obscenity.[2] In any event these laws must be tested—whatever may have been the situation at the time of their initial enactment—in the light of the knowledge and practice of the medical profession and all other pertinent facts of here and now.

> "In approaching this problem, we cannot turn the clock back to 1868 when the Amendment was adopted, or even to 1896 when Plessy v. Ferguson was written. We must consider public education in the light of its full development and its present place in American life throughout the Nation." *Brown v. Board of Education of Topeka*, 347 U. S. 483, 492 (1954)

Not only is there no legislative finding to illuminate the purpose of the drastic laws here under consideration and their impact on these appellants, there is also an absence of judicial rationale. The Court below did not attempt to specify the legislative purpose supposedly served by these laws other than by making a general reference to the legislative power "to guard the public morals, the public safety and the public health" (R. 29, 30).[3]

2. Even if tested as an obscenity law today, the statute would be unconstitutional. See Point IV, *infra*.

3. Reference was made to earlier decisions in State v. Nelson, 126 Conn. 412, 26 A 2d 582 (1940) and Tileston v. Ullman, 129 Conn. 84, 26 A 2d 582 (1942) but insofar as a rationale was stated in those decisions it was not reiterated below (except to the extent, see *infra*, p. 22, that the court reiterated *Tileston* in referring to abstinence as an alternative.) (R. 33).

The naked question is therefore presented whether the supposed aim of the state to protect in the most general terms "the public morals, the public safety and the public health," can constitutionally justify the admitted impact of these laws on the appellants and others similarly situated. Obviously, nothing in the Record does so. We shall devote the remainder of this brief to demonstrating with regard to the medical prescription of contraceptives for married persons that there is "in the light of its full development and its present place * * * throughout the Nation" no reasonable basis for concluding that these laws as applied to these appellants bear any relation whatever to "morals," "safety" or "health," and that on the contrary they and their effects are inimical to all of these objectives.

POINT II

There is no reasonable basis in the facts of medical science for the application of the challenged statutes to these appellants.

The Court below referred, as we have seen, to the power of the legislature to "guard * * * the public health" (R. 29, 30), in a context which might suggest that the Connecticut Court thought the Connecticut laws here involved could be defended as "health measures." The fact is, however, that the overwhelming weight of medical authority is to the contrary. The effect of these laws is at one and the same time to deny the benefits of advances in medical science to these appellants and other citizens of Connecticut and to serve no recognized medical aim whatever.

A. The overwhelming weight of medical opinion regards conception control as a vital and necessary aspect of medical care.

It is conceded on the Record in these cases, that pregnancy would be dangerous to the health and welfare of the individual patients involved. There are, of course, many other medical situations in which it is important—often as in the Doe case, quite literally, a matter of life and death—to prevent pregnancy. Medical authorities indicating some of these conditions appear in Appendix A hereto. The dangers which pregnancy may entail in these cases include, in addition to the risk of death, risk of continued or increased physical and or mental illness.

It is also conceded on the Record, in the words of the Court below: "that the use of contraceptives is indicated as the best and safest preventive measure which medical science can offer these plaintiffs" (R. 33).

Nor can it be disputed that the medical profession in Connecticut, in the United States as a whole and throughout the world regards the use of "drugs" "medicinal articles" and "instruments" for the purpose of preventing conception as both necessary and proper. The use and prescription of such drugs and devices has been repeatedly endorsed by the organized medical profession; their use and prescription is recommended without qualification by the leading text writers in the relevant medical specialties; their use and prescription is taught in the leading medical schools throughout the country.[3a] Moreover, their use and prescription is safeguarded by the routine test-

3a. In Appendix G will be found a "Selected Bibliography of Contraception: 1940-1960," listing 344 technical books and articles written by physicians, scientists and scholars in this country and abroad.

ing and approval of the federal Food And Drug Administration and by the Council on Drugs of the American Medical Association.

In Appendix B we have set forth in detail the facts of public record as to the virtually unanimous endorsement by the medical profession of the prescription of contraceptives for married persons in cases of medical necessity such as those here presented. Such prescription and the teaching of the necessary techniques to doctors so that they can make such prescriptions, is called for by the American Medical Association, the American Public Health Association, the American Gynecological Society, the American Neurological Association, the Section on Obstetrics and Gynecology of the American Medical Association, the Section on Nervous and Mental Diseases of the American Medical Association, the American Association of Medical Students and many other national medical groups as well as by a large number of state and regional medical associations, among them the Connecticut State Medical Society.

The pertinent 1937 resolution of the American Medical Association itself—typical of the others set forth in Appendix B—reads as follows:

> "1. That the American Medical Association take such action as may be necessary to make clear to physicians their legal rights in relation to the use of contraceptives.
>
> "2. That the American Medical Association undertake the investigation of materials, devices and methods recommended or employed for the prevention of conception, with a view to determining physiologic,

chemical and biologic properties and effects, and that the results of such investigations be published for the information of the medical profession.

"3. That the Council on Medical Education and Hospitals of the American Medical Association be requested to promote through instruction in our medical schools with respect to the various factors pertaining to fertility and sterility, due attention being paid to their positive as well as to their negative aspects."[1]

In 1931, the Connecticut State Medical Society called for "legalizing the dissemination of contraceptive advice for medical purposes" in such cases as "tuberculosis, heart disease, nephritis and other serious diseases."[2] Subsequently, in 1932, the Connecticut Society adopted a report of its Committee on Public Policy which stated:

"If the occurrence of pregnancy in physically unsuitable mothers is legally recognized as unpreventable, if artificial medical termination of that pregnancy is legally authorized, and the term 'to preserve life' liberally interpreted, if this procedure to 'preserve life' is fraught with risk in itself and is added tax at a time when all stress should be avoided, then sane medical opinion would certainly decree that prevention of such a condition (pregnancy in disease) was immeasurably superior to the corrective procedures; certainly the situation parallels immunization

[1] *The Journal of The American Medical Association*, p. 2218.

[2] *Proceedings of the Connecticut State Medical Society*, 1932.

and prophylaxis in infectious diseases and the periodic health examination as compared to treatment after disease has become established * * *.

"Studies of maternal mortality in Connecticut prove that approximately one quarter of our deaths arise from septic abortions, a second quarter from disease of the heart, kidneys, lungs and metabolic diseases associated with pregnancy. Thus, a large percentage of our annual loss could be obviated by some harmless method of preventing pregnancy in such cases * * *.

"Legal authority should be secured for physicians to exercise their proper duty to protect and procure for their patients the best possible state of health, including—when required—the prevention of conception."[6]

The position of the medical profession is succinctly summarized in the report adopted, in 1946, by the Committee on Public Health of the New York Academy of Medicine which called for "the recognition of medically indicated contraception as an integral and essential part of preventive medicine."[7]

Not only organized medical groups but also medical text writers are united in the opinion that contraception,

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6. *Proceedings of the Connecticut State Medical Society*, 1932, pp. 60-61; 58.

7. *Bulletin of New York Academy of Medicine*, Oct. 1946, p. 555.

(c., "the use of [a proper] drug, medicinal article or instrument for the purpose of preventing conception" is a desirable and necessary medical technique (see Appendix A hereto).

While in 1879, when the statutes herein challenged by the appellants were passed, no medical school gave students any instruction in contraceptive techniques or in medical indications for contraception, by 1933 a survey made by the National Committee on Maternal Health showed that three out of five schools were instructing in medical indications for contraception.[8]

In March, 1942, the Medical Department of the Planned Parenthood Federation of America undertook another survey of the teaching of contraception in the medical schools of the United States and Canada. A report was issued based on replies from forty-six recognized schools giving complete medical courses and representing over sixty per cent of the total number of approved medical colleges in this country and Canada. Forty-two of the forty-six schools answered that instruction was given. Three of the remaining four did not indicate whether it was or not but requested copies of the pamphlet *Techniques of Conception Control* by Robert L. Dickinson, M.D., for the use of their students. Only one school replied specifically that no instruction in contraception was given.[9]

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8. Stone, Abraham, "The Teaching of Contraception in Medical Schools," August, 1942 issue of *Human Fertility*, (Vol. 7, No. 4, 1081). The survey referred to is one Dr. S. A. Knopf of New York made in a questionnaire sent to 75 Grade A medical colleges of the country (64 replies were received).

9. *Ibid.*

A 1946 study in Greater New York showed that every one of the six New York City medical colleges gave some instruction in contraceptive techniques.[10]

The report published in 1947 of a survey of obstetricians and gynecologists throughout the country showed that of 3,381 physicians who responded, 98% approved prescription of contraception for one or more medical reasons.[11]

In 1958 the following statement was issued by the chairmen of the departments of obstetrics and gynecology at the six New York City area medical schools:[12]

10. *Report of Committee on Public Health Relations of the New York Academy of Medicine*, 1946, reprinted by Planned Parenthood Federation of America in *Report on Planned Parenthood Services in New York City* (1946).

In 1947, Dr. Alan Guttmacher reported:

> "Teaching in contraception is being added to the curricula of medical schools. When the replies of those who graduated before 1920 are compared with the replies of those who graduated fifteen years or more later, it is noted that 90 per cent of the graduates before 1920 had no medical school teaching in contraception, this was true for only 27 per cent of those who graduated in 1935 or later."

Guttmacher, Alan F., M.D., March, 1947, *Human Fertility*, Vol. 12, No. 1. The same study also showed that one-third of the respondents to the questionnaire took post-graduate medical training in contraceptive techniques and medical indications for contraception.

11. Guttmacher, Alan F., M.D., *Human Fertility, supra*, note 10. In the summer of 1958 an offer to 14,000 psychiatrists and matrons of a Federation pamphlet entitled *Simple Methods of Contraception: An Assessment of Their Medical, Moral and Social Implications*, brought requests from 40% of those receiving the offer. Over 100,000 copies of this publication were distributed. *Planned Parenthood News*, Fall, 1958.

12. Gordon W. Douglas, M.D., Chairman of Obstetrics and Gynecology, New York University College of Medicine; R. Gordon Douglas, M.D., Professor of Obstetrics and Gynecology, Cornell University Medical College; Louis M. Hellman, M.D., Chairman of

"As teachers of obstetrics and gynecology, we wish to emphasize our conviction that the proper prescription of birth control measures is an important and indeed essential aspect of preventive medicine."[13]

There is thus a clear consensus of medical opinion affirming the medical necessity for the prescription of drugs, articles or instruments where, as in the cases at bar, the physician believes the health of his patients requires such a prescription.

We submit that legislation forbidding resort to remedies the medical profession considers necessary is *prima facie* arbitrary and a denial of due process. The decisions of this Court clearly support this view. *Lambert* v. *Yellowley*, 272 U. S. 581 (1926); *James Everards Breweries* v. *Day*, 265 U. S. 545 (1924); *cf. Jacobson* v. *Massachusetts*, 197 U. S. 11 (1905).

In the *Yellowley* case, the issue was the validity of congressional regulation (not complete prohibition) of liquors for medicinal purposes. This Court upheld the legislation only after noting that, *in the light of divergent opinions among physicians*, the particular restriction there involved could not "be regarded as arbitrary or without a reasonable basis" (272 U. S. at p. 595). It was clearly implicit that, had the profession been united as to the necessity for the prescriptions outlawed in *Yellowley*, the result would

Obstetrics and Gynecology, State University of New York—Downstate Medical Center; Seymour L. Romney, M.D., Chairman of Obstetrics and Gynecology, Albert Einstein College of Medicine; Marvin L. Stone, M.D., Chairman of Obstetrics and Gynecology, New York Medical College; and Howard C. Taylor, Jr., M.D., Chairman of Obstetrics and Gynecology, The Presbyterian Hospital, Columbia-Presbyterian Medical Center. *Planned Parenthood News*, Fall 1958.

13. New York Times, August 31, 1958.

have been different. Mr. Justice Brandeis noted that it was the lack "of any consensus of opinion among physicians" that "made it impossible to say that the provision was an unreasonable and arbitrary exercise of power * * *" (272 U. S. at p. 594). Similarly in the *Everards* case, *supra*, the Court found crucial to the validity of a flat prohibition on malt liquors the fact that "There is no consensus of opinion among physicians and medical authorities that they have any substantial value as medicinal agents" (265 U. S. at p. 562).

In the instant case there is a clear consensus of medical opinion *affirming* the necessity for the prescriptions outlawed by the statutes challenged and both the court below and the appellees have acknowledged this fact. *Cf.* Stone, C. J. concurring in *Skinner* v. *Oklahoma*, 316 U. S. 534, 545 (1942): "A law which condemns * * * all the individuals of a class to so harsh a measure * * * is lacking in the first principles of due process."

B. There is no basis for the position that there is a reasonable medical alternative to the prescription of contraceptives in the instant cases; the alternative relied upon by the court below—abstinence—is not such an alternative.

The court below found that the proscription of accepted medical remedies here involved, although contradictory to "the best and safest preventive measure" called for by the medical profession, was nonetheless constitutionally valid because "there is * * * another alternative, abstinence from sexual intercourse" (R. 33).

In the absence of any legislative finding or statement of purpose we submit that the court below went very far

indeed in premising its finding of constitutionality on the *a priori* assumption that the legislature meant to impose on individuals in the state of Connecticut a penalty at once so drastic and so violative of basic constitutional rights as abstinence from sexual activity in marriage under threat of death or ill health.

Not only is there no basis in the history of the challenged legislation for finding such a legislative purpose, the fact is that medical opinion clearly does not regard total abstinence by married couples as an alternative to safe and tested contraceptive techniques. Abstinence is not a medically acceptable alternative;[14] on the contrary the medical view is that abstinence is harmful with respect to physical and psychological well-being.

This view was aptly expressed by Dr. Robert L. Dickinson, in *Techniques of Conception Control*, (3rd Edition, Williams & Wilkins Co., 1950) at p. 40:

> "In the close relationship of married life the effect of prolonged abstinence is usually harmful to mental health and balance and to the marriage relationship and a risk to fidelity. As a birth control measure for recommendation by the physician abstinence is *negligible* . . . ."

A representative sample of medical opinion on this subject is set forth in Appendix D hereto. It demonstrates

14. We are not here concerned with the concept of abstinence as a desirable state from a philosophical or religious point of view. Obviously there must, under our constitutional system, be freedom for voluntary practice of abstinence, and advocacy thereof. This however in no way detracts from the fact that abstinence is not a medically accepted alternative for married people, and in no way justifies imposition of abstinence in marriage by legislative fiat where pregnancy could be dangerous to life or inimical to health.

that there is no medical basis for enforced abstinence as a therapeutic measure in situations such as those here presented.

C. In the present state of medical science, a physician's failure to prescribe contraceptives in proper cases falls within the area of malpractice.

Thus medical opinion accepts and recommends contraceptive drugs and devices in the treatment of conditions such as those affecting appellants Doe and the Poes and rejects the only alternative—total abstinence—offered by the court below. The advice which appellant Dr. Buxton seeks to give his patients is the advice called for under the prevalent standards of his profession. As a physician, the canons of ethics under which he practices require him to make this advice available to his patients.[15] Moreover, under the common law governing the legal obligation of a physician, Dr. Buxton is also required to advise his patients in accordance with the best techniques generally accepted by his profession.

He must "have the skill normal to the average member of the profession" and "if [he] * * * possesses special skill he must exercise it * * * whenever he * * * realizes or should realize that its exercise is necessary to the reasonable safety of others." *Restatement, Torts*, §299 (d), (f).

A doctor is ordinarily liable for malpractice not only on account of negligent acts of commission, but also on account of negligent acts of omission. Thus, the Kentucky court, in *Walden* v. *Jones*, 289 Ky. 395, 158 S. W. 2d 609

15. See e.g., Section II of the Canons of Ethics of the American Medical Association (*Journal of the American Medical Association*, Special Edition, June 1958).

(1932) held it malpractice, as a matter of law, where a physician failed to apply a prophylactic to the eyes of a newborn child, noting that:

> "* * * it is the recognized practice of the medical profession in communities and neighborhoods similar to that involved in this case to drop silver nitrate in the eyes of a child immediately after delivery." (289 Ky. at p. 397)

Similarly, a New Jersey court found that a physician's failure to make a biopsy to determine the nature of a growth was malpractice. *Coleman* v. *Wilson*, 85 N. J. L. 203, 88 A. 1059 (1913). In Ohio failure to make an x-ray of a fractured leg was held malpractice. *Stoll* v. *Balazs*, 32 Ohio App. 117, 167 N. E. 522 (1929). Also in Ohio it has been said that a physician is liable for malpractice if he neglects to apply such skill and care as would be required to prevent deterioration in or aggravation of the patient's condition. *Craig* v. *Chambers*, 17 Ohio State 253 (1867).

A recent case in the State of Washington demonstrates the scope of the obligation of one who undertakes the responsibility of medical care. In that case [*Kelly* v. *Carroll*, 36 Wash. 2d 482, 219 P. 2d 79 (1950), *cert. den.* 340 U. S. 892 (1950)] a patient who was, in fact, suffering from appendicitis, called in a "drugless healer." The healer, acting on theories which were not derived from medical science, followed a medically erroneous course of treatment, refused to call in a medical doctor, and the patient died. The Washington court, holding the healer liable, ruled:

> "* * * Due regard must be had for the advanced state of medical knowledge at the time of the treatment of

> any human malady, and refuge may not be found in the practices of the medical dark ages * * * It follows that, if there is a reasonable general agreement as to what is the proper medical treatment * * * the question of whether or not the treatment, in a particular case, was correct must be determined by the testimony of expert witnesses from the medical field *who alone are qualified to speak.*" (at p. 493) (Emphasis supplied.)

Thus the Washington court put its finger squarely on a proposition that is crucial to this case, namely, that it is doctors who are primarily qualified to decide upon what constitutes necessary and proper medical treatment. We have already shown above that in the instant cases it is both conceded and established by the facts of public record that the prescriptions banned are the necessary and proper medical treatment. Cf. *United States* v. *31 Photographs etc.*, 156 F. Supp. 350 (S. D. N. Y. 1957) where Judge Palmieri said

> "The Tariff Act of 1930 provides no warrant for either customs officials or this Court to sit in review of the decisions of scholars as to the bypaths of learning upon which they shall tread." (156 F. Supp. at p. 360)

As against the consensus of medical opinion in the field, a doctor today might well be held liable for malpractice if in cases like those of Mrs. Doe and the Poes he did not make available the prescription developed by accepted techniques of modern medicine, namely of contraceptive drugs, medicinal articles or instruments.

No doubt, in Connecticut, the command of the statutes here involved would be successfully raised in bar of any effort to hold a physician liable for malpractice for failure to prescribe a contraceptive in a case medically indicating such a prescription. In other words, Dr. Buxton could not, we believe, be held liable for malpractice in these cases because he was forced by the state not to do his medical duty. But surely the fact that he might well be held so liable elsewhere amply demonstrates the capriciousness of the challenged enactments.[15a]

D. There is no basis in the Record or in the medical facts of public record for any claim that the use of medical contraceptives is or can be harmful.

The overwhelming opinion of the medical profession as reflected in Appendices A and B is, in itself, adequate proof that the use of medical contraceptives is in no way harmful. That drugs, articles and instruments for the prevention of conception are not medically hazardous is also shown by the fact they are endorsed by the medical societies, the textbooks, and the medical schools, cleared for shipment in interstate commerce by the Food and Drug Administration (and as we show below in Point III, legally used and prescribed in at least 48 of the 50 states of the union). Furthermore, on this Record the state has, of course, conceded that the drugs and devices which appellants Doe and the Poes seek the right to use, and appellant

15a. Indeed, quite recently, two members of this Court took occasion to express their views of the importance of expert opinion to legal decision in an area where unlike here, there is not substantial unanimity of opinion. See Smith v. California, 361 U. S. 147 (1959) 165, 172 (Separate opinions of Frankfurter and Harlan, J. J.).

Buxton seeks the right to prescribe are "according to medical science, the best and safest preventive measure for the plaintiffs to follow in order to avoid pregnancy." (R. 29)

As further evidence of virtually unanimous medical opinion, it should be noted that the Council on Drugs of the American Medical Association annually publishes an evaluation of drugs for the guidance of the profession, entitled *New & Non-Official Drugs*. The current (1960) volume, like those in previous years, notes a list of contraceptive devices and drugs, stating "this chapter provides information on preparations for use in the prevention of pregnancy." (p. 426). As recently as May of 1960 the Food and Drug Administration approved as safe a relatively new contraceptive drug, the steroid product Enovid, which had been extensively tested in Puerto Rico, Los Angeles, San Antonio and elsewhere.[16] Medical writers generally affirm the efficacy and freedom from deleterious consequences of drugs and devices for contraception.[17] Ob-

16. New York Times, May 10, 1960.

17. See *e.g.*, Greenhill, J. P. *Office Gynecology*, The Year Book Publishers, Inc. (1959) 7th Ed., p. 304: "It has never been proved that the modern mechanical devices which are used in the vagina have produced pelvic injury, sterility or cancer"; also *Shaw's Textbook of Gynecology*, revised by Howkins, 7th Ed., A. Churchill, Ltd. (1956): "The question of possible ill effects caused by the use of contraceptive methods frequently arises. The Biological and Medical Committee of the Royal Commission on Population reported (Vol. 4, 1950): 'Of the methods now in general use in this country, it can be said with some confidence that, if employed in accordance with instructions, they cause no observable injury to the genital passages' (paragraph 46); and in a later paragraph (52) they summed up: '* * * there is at present no evidence that birth control methods which are generally approved by the medical profession and regarded by them as harmless impair fecundity.'"

To the same effect see Stallworthy, et al., *Problems of Fertility in General Practice*, Cassel, (1953), at 132; Stone & Himes, *A*

viously there is no rational basis for supposing that the drugs and devices used in medical schools and hospitals,[17] recommended by the American Medical Association and approved by the Food and Drug Administration, can be dangerous to the people of Connecticut.

POINT III

Viewed as measures to safeguard public morals there is no reasonable basis for the application of the challenged statutes to these appellants.

If it is assumed that the aim of the laws here involved is to safeguard public morals (another power of the legislature ambiguously referred to by the court below), rather than public health, the statutes prohibiting medical prescription of contraceptives in cases where life and health are involved stand on no better ground. For family limitation in situations of medical need such as those herein presented is approved by every major religious group in

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Practical Guide to Birth Control Methods, Viking (1958), at 78-79, 131; Tietze, *The Condom as a Contraceptive*, National Committee on Maternal Health, (1960), at 39. For medical description and evaluation of the relative usefulness of various available drugs and devices see Dickinson, *Techniques of Conception Control*, Williams & Wilkin Co. (1950).

18. The Roman Catholic Church approves only "natural" methods of birth control. See Point III immediately following. Therefore prescription of certain types of contraceptive devices is not approved in hospitals operated by that Church. However, the basis for this rejection of certain methods is admittedly doctrinal, not medical. Thus as stated in *Ethical & Religious Doctrines for Catholic Hospitals* promulgated by the Catholic Hospital Association of the United States [printed in Kenny, *Principles of Medical Ethics*, The Newman Press (1952), p. 187], "operations, treatments and devices designed to render conception impossible are *morally* objectionable." (Emphasis supplied.)

the United States today and by the public opinion of the community at large. There are some differences of opinion as we shall see, concerning acceptable methods, *e.g.* the Catholic Church rejects some of the methods of birth control acceptable to the medical profession and to other religious groups. All opinion, however, supports the morality of family planning and conception control by one method or another in cases where it is medically called for. This is evidenced wherever one looks for indicia of moral leadership or community standards in contemporary America.

A. All organized religions affirm the need for control of conception by married couples in at least some cases.

1. *Protestant*: The Protestant churches overwhelmingly assert the right of married people to control conception; a substantial segment goes further and affirms conception control to be the moral *duty* of the married individual especially where as in the case at bar medical indications are present.

In 1958, the Archbishop of Canterbury convened a group of theologians who reported in *The Family in Contemporary Society* as follows:

> "The more we understand of our procreative powers, the more responsible we are for the way in which we use them. The price of this generation's knowledge is therefore a heavier burden of responsibility. Christian parents who participate in that knowledge, whether they accept contraception or not, cannot but feel obliged to 'space' and 'plan' their families according to their understanding of themselves, of the well-being of their children, and of the needs of the society of

which they are part. * * * If our conscience will not tolerate, when we know how to prevent it, a torrent of infant deaths, no more should we, with the knowledge we have, encourage an ungoverned spate of unwarranted births.

"If, therefore, governments resolve that it is their duty to encourage (but not to enforce) the adoption of family planning in conjunction with their best endeavors to raise the level of living in other ways, we cannot say that Christians ought to withhold their support. * * *"[18a]

The Lambeth Conference of Bishops of the Anglican Communion, which includes the Protestant Episcopal Church in the United States, in 1958 adopted the following resolution:

"The Conference believes that the responsibility for deciding upon the number and frequency of children has been laid by God upon the consciences of parents everywhere; that this planning, in such ways as are mutually acceptable to husband and wife in Christian conscience is a right and important factor in Christian family life and should be the result of positive choice before God."[19]

This resolution was adopted after the Conference considered both the report on *The Family in Contemporary Society* cited above, and an additional report by a committee of the Conference, consisting of Bishops and Archbishops, which stated:

"The responsible procreation of children is a primary obligation * * * The choice must be made by parents together, in prayerful consideration of their resources,

18a. *The Family in Contemporary Society*, S.P.C.K. (1958), pp. 15-16.

19. *The Lambeth Conference 1958*, S.P.C.K. (1958), p. 157.

> the society in which they live and the problems they face * * * The means of family planning are in large measure matters of clinical and aesthetic choice, subject to the requirement that they may be admissible to the Christian conscience. Scientific studies can rightly help, and do, in assessing the effects of the usefulness of any particular means; and Christians have every right to use the gifts of science for proper ends." [19a]

This resolution was affirmed in 1959 by the National Council of the Protestant Episcopal Church.[20]

A number of outstanding Protestant and Jewish religious leaders declared in 1960:

> "God has placed on married couples the positive duty to determine the number and spacing of their children. * * * As a rational being, with a capacity for making such decisions, man is able to apply experience, to assess right and wrong, to interpret God's will, and, therefore, to determine his own actions. To forfeit this ability is to abuse one of God's most precious gifts." [21]

19a. *Ibid.*, pp. 2:146-7.

20. See press release, "Highlights, National Council Meeting, Dec. 7-9, 1959" issued by Public Relations Division of The National Council of the Protestant Episcopal Church.

21. Statement by the Clergymen's National Advisory Committee of the Planned Parenthood Federation of America, "The Ethics of Family Planning" (1960). This Committee consists of the following individuals: The Rt. Rev. James A. Pike, Bishop, Episcopal Diocese of California, San Francisco, (Chairman); Dr. John C. Bennett, Dean, Union Theological Seminary, New York City; Dr. Oscar A. Benson, Past President, Augustana Lutheran Church, Los Angeles, California; Dr. Roy Burkhart, Minister Emeritus, First Community Church, Columbus, Ohio; Rabbi Maurice N. Eisendrath, President, Union of American Hebrew Congregations, New York City; Dr. Joseph Fletcher, Episcopal Theological School, Cambridge, Massachusetts; Dr. Harry Emerson Fosdick, Pastor Emeritus, Riverside Church, New York City, The Rev. William Genne, Director, Depart-

The 1960 General Conference of the Methodist Church declared that "planned parenthood, practiced in Christian conscience fulfills rather than violates the will of God."[22]

The Council for Christian Social Action, United Church of Christ takes the position that "Responsible family planning is today a clear moral duty."[23]

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ment of Family Life, National Council of Churches, New York City; Dr. Donald Harrington, The Community Church, New York City; The Rev. Duncan Howlett, All Souls Church, Washington, D.C.; The Rev. G. Curtis Jones, Union Avenue Christian Church, St. Louis, Missouri; Rabbi Edward E. Klein, Stephen Wise Free Synagogue, New York City; Dr. J. Oscar Lee, Director, Department of Racial and Cultural Relations, National Council of Churches, New York City; The Rev. Richard E. Lentz, The United Christian Missionary Society, Indianapolis, Indiana; The Rev. Vere Loper, First Congregational Church, Berkeley, California; Dr. Walter G. Muelder, Dean, Boston U. School of Theology, Boston, Massachusetts; Dr. Reinhold Niebuhr, Union Theological Seminary, New York City; The Rev. Dr. Bromley Oxnam, Bishop of the Washington Area, The Methodist Church, Washington, D. C.; Dr. Norman Vincent Peale, Marble Collegiate Church, New York City; Dr. Clarence E. Pickett, American Friends Service Committee, Philadelphia, Pennsylvania; The Rev. Dan M. Potter, Executive Director, Protestant Council of the City of New York; Dr. Alfred M. Rehwinkel, Concordia Seminary, St. Louis, Missouri; Dr. James H. Robinson, Church of the Master, New York City; Bishop B. Julian Smith, Christian Methodist Episcopal Church, Chicago, Illinois; The Rev. Ralph W. Sockman, Christ Church, New York City; The Rev. William B. Sperry, Christ Church, Detroit, Michigan; The Rev. Edward D. Staples, Director, Dept. of the Christian Family, General Board of Education, The Methodist Church, Nashville, Tennessee; Dr. Henry P. Van Dusen, President, Union Theological Seminary, New York City; The Rev. Dr. Hazen G. Werner, Bishop of the Ohio Area, The Methodist Church, Columbus, Ohio; The Rev. Granger Westberg, School of Medicine, and Federated Theological Faculty, University of Chicago; Rabbi David H. Wice, Congregation Rodeph Shalom, Philadelphia, Pennsylvania; The Rev. Paul Wright, First Presbyterian Church, Portland, Oregon; Dr. J. C. Wynn, Colgate Rochester Divinity School, Rochester, New York; Dr. C. T. R. Yeates, Westminster United Presbyterian Church, Des Moines, Iowa.

22. *Report No. 7*, Committee on State of the Church, Adopted May 3, 1960.

23. Statement adopted January 30, 1960; published in 26 *Social Action*, No. 8, pp. 24-27, April 1960.

Protestant religious groups favor use of any safe, effective and medically acceptable methods of contraception. In Appendix C are set forth a number of recent statements made on this subject by these groups.

2. *Jewish*: The Protestant view is shared by the great majority of organized Jewish opinion, which specifically endorses medically directed conception control. One of the most recent expressions of this viewpoint is the statement made in 1959 by the General Assembly of the Union of American Hebrew Congregations:

> "a. We favor the elimination of all restrictions and prohibitions against the dissemination of birth control information and the rendering of birth control assistance by qualified physicans, clinics, and hospitals.
>
> "b. We favor the wider dissemination of birth control information and medical assistance, both by private groups such as the Planned Parenthood Association, and health agencies of local, state, and the federal government as a vital service to be rendered in the field of public health."[24]

Similar statements by other organized Jewish groups appear in Appendix C. They reflect the views of the largest organized bodies of Jewish opinion in the United States today.

A minority Jewish group, representing the Orthodox Jews, approves of conception control for health purposes, but restricts the methods of control to which it extends sanction. This position is set forth in a statement (re-

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24. *Resolutions Passed by the 45th General Assembly, Union of American Hebrew Congregations* (1959) reprinted in *The Churches Speak Up On Birth Control*, published by Planned Parenthood Federation of America, 1960.

printed in Appendix C) issued by the Rabbinical Alliance of America in 1958 when this group joined with other Jewish groups in objecting to any prohibition on the giving of contraceptive advice in municipal hospitals in New York City.[25]

3. *Catholic*: The Roman Catholic position on this subject is expressed in the statement of Pope Pius XII in 1951:

> "We affirm the legitimacy and, at the same time, the limits—in truth very wide—of a regulation of offspring which, unlike so-called 'birth control,' is compatible with the law of God. One may even hope that science will succeed in providing this licit [rhythm] method with a sufficiently secure basis."[26]

A standard Catholic publication on this subject, published under ecclesiastical imprimatur, states that conception may be prevented in order to avoid:

> "Economic burdens, the burden of poverty, of inadequate income, of unemployment which make it impossible for parents to give their children and themselves the food, the clothing, the housing, the education and the recreation they are entitled to as children of God. * * *"[27]

The general consensus of Catholic theologians favors the use of the "safe period" as a means of family planning

25. New York Times, August 12, 1958.

26. Pope Pius XII "Morality in Marriage," Address to the National Congress of the Family Front, *The Catholic Mind*, May 1952, p. 311.

27. Leo J. Latz—*The Rhythm*, Latz Foundation, 6th edition, (1940), p. 147. To the same effect Father Francis J. Connell, "Birth Control, the Case for the Catholic" (1939), 164 *Atlantic Monthly*, 468, 471.

where special circumstances, including financial, medical, eugenic or social conditions are present.[28]

John Cogley, a former editor of *The Commonweal* in a statement approved by the Archdiocese of New York, stated:

> "Strictly speaking, it is artificial birth prevention (by means of contraceptive devices, chemicals, etc.) which the Church condemns as intrinsically evil. 'Natural' birth control—the so-called rhythm theory—is permitted (as the Pope stated) in cases where undue medical or economic hardship makes family limitation imperative." [29]

There is no authoritative determination of the extent to which the approved Roman Catholic method of conception control may be restricted by the laws at issue here. While reliance on the "safe period" method (based on the theory that sexual intercourse may be restricted to infertile periods) [30] does not necessarily involve a drug, medicinal article or instrument for the purpose of preventing conception, in recent years various devices have been developed for the purpose of seeking to make this method more

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28. See J. A. Ryan, "The Moral Aspects of Periodic Continence." *The Ecclesiastical Review* LXXXIX (1938).

29. *The Churches Speak Up On Birth Control*, Planned Parenthood Federation of America, 1960.

30. There is substantial medical authority questioning the reliability of this method. See *e.g.*, data on research of Drs. Stone, Dickinson and Bryant, in article by Dr. D. D. Bromley "Birth Control" 110 *Journal of the American Medical Association*, 257-261; Decker & Decker, *Practical Office Gynecology*, F. H. Davis (1956), p. 320, Dickinson, *Techniques of Conception Control*, 3rd ed., Williams & Wilkins (1950); Fleck, Snediker & Rock, "The Contraceptive Safe Period," 223 *New England Journal of Medicine*, 1005 (1940); Guttmacher, *Babies by Choice or by Chance*, (Doubleday, 1959).

reliable.[31] Some of these devices may well be regarded as "drugs, medicinal articles or instruments for the purpose of preventing conception," in which event, of course, both the medically approved methods and the method chosen by the Catholic Church would be banned by the laws here at issue.

B. State and privately sponsored medical prescription of contraceptives is legal and widespread throughout the rest of the United States.

1. Legality

We have prepared a map (Appendix E) showing the pattern of state laws relating to contraception throughout the country. Connecticut alone has legislated with reference to the "use" of contraceptives and has construed its statute to prohibit use by all persons under all circumstances. Massachusetts has imposed an apparently equally absolute ban on sale, display and prescription. The remaining 48 states at the very least permit the prescription by doctors of contraceptives, "natural" or "artificial," in cases of medical necessity such as those here

31. Several types of "rhythm" calendars have been put on the market as aids to women seeking to ascertain a "safe" period. [For actions taken by the FTC against claims made for some such products, see In the Matter of Scientific Instruments, Inc., Fed. Trade Comm., File No. 1-10400 (1940); In the Matter of Edwin Ries, doing business as The Health Calendar Company, Fed. Trade Comm., Stip. No. 02656 (1940).] In State v. Nelson, 126 Conn. 412 26 A. 2d 582 (1940) the Connecticut Supreme Court of Errors indicated that it did not regard calendars as within the statutory ban. However, since the decision in the *Nelson* case new devices have come into vogue for use incidental to the rhythm method, some of which are applied to or in the body. These devices may well be covered by the statute. Among these are vaginal thermometers, chemicals to test urine and vaginal tampons (for the purpose of determining presence of a substance which stimulates ovulation). One such tampon—Testape—has been approved by *The Grail*—The Magazine of Catholic Family Living (Fall, 1958).

presented. A large number of jurisdictions have made no effort to regulate or control contraceptive devices—thus leaving the public to the guidance of medical and spiritual leaders a majority of whom, as we have seen, call for their use. Another large group of states limits the distribution of contraceptives to medical or pharmaceutical channels. Others merely forbid commercial advertising of contraceptives. Some states, interested in safeguards rather than prohibitions, provide for inspection and quality control. The few state laws which are not expressly limited in their prohibitions have been interpreted—judicially or administratively—to permit medical prescription of contraceptives, as has the federal law in the field. The federal Comstock laws (also prohibitions absolute on their face and passed as "obscenity" legislation at roughly the same time) have been consistently interpreted to permit mailing and interstate and foreign shipment from and to physicians and on their prescription of "things which might intelligently be employed by conscientious and competent physicians for the purpose of saving life or promoting the well-being of their patients * * * which in many cases is advocated by such a weight of authority in the medical world."[32]

2. *Availability of Contraceptive Services*

The ninety-six Planned Parenthood Federation of America affiliates maintain 146 centers for the dissemination of medical advice on family planning (as described in Appendix F). According to a survey published in 1957, the total number of centers throughout the country to

32. United States v. One Package, 86 F. 2d 737 (2d Cir. 1936) at 739-40; see also United States v. Nicholas, 97 F. 2d 510 (2d. Cir. 1938); Youngs Rubber Co. v. C. I. Lee & Co, 45 F. 2d 103 (2d Cir. 1930); Consumers Union of United States v. Walker, 145 F. 2d 33 (D. C. Cir. 1944).

which patients were referred for medical services in the contraception field was 546.[33]

In some communities state or city health agencies or institutions are a primary source of advice and information. Contraceptive services are part of the official public health programs of at least seven states: Alabama, North Carolina, South Carolina, Florida, Georgia, Mississippi and Virginia.[34]

Federal funds for the support of such state health work in the birth control field are available under the policy directive issued by the Surgeon General of the United States in 1942 which stated:

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33. *Directory of Clinic Services*, Planned Parenthood Federation of America (1957).

34. Norton, J.W.R., M.D., "A Health Department Birth Control Program," 29 *American Journal Of Public Health*, 253 March 1939. In this article Dr. Roy Norton reports on the progress of the North Carolina State Board of Health Program after 18 months of experience:

> "A health department birth control program is an essential part of the maternity and infant public health service and the better selection of pregnancy risks should favorably affect maternal and infant morbidity and mortality conditions in the counties."

See also Norton, *et. al.*, "Twenty-one Years Experience With a Public Health Contraceptive Service," 49 *American Journal of Public Health*, 993, August 1959, in which Dr. Norton states:

> "The contraceptive service has definitely been a factor in the improvement of maternity and child health in the state."

The experience of some of the state programs was summed up in a 1958 symposium reported in Calderone, Ed., *Abortion in the United States* Hoeber-Harper (1958), pp. 154-157. Dr. Mack I. Shamholtz, State Health Commissioner of Virginia, reported that his state sponsored 180 general maternity clinics, each offering postpartum advice on contraception where medically indicated (p. 154). See also statements by Dr. Helen W. Bollhouse, Director of the Division of Maternity and Child Health, Department of Public Health, Atlanta, Georgia (p. 155); Dr. Hilla Sheriff, Director of the Division of Maternity and Child Health, State Board of Health, South Carolina (p. 155); Dr. D. V. Galloway, Director of State Board of Health, Mississippi (pp. 155-6).

"'Should a State Department of Health decide on its own initiative to undertake a child-spacing program in accordance with the health laws of the state, the Public Health Service would give the proposal the *same consideration as would be given to any other proposal in connection with the health program of the state.* * * * Federal funds allotted to the states under the provision of Title 6 of the Social Security Act and the Venereal Diseases Act may be used for the purpose of carrying on planned parenthood programs by the state and local health departments.'" [35] (Emphasis added.)

The opinion of public health officials throughout the country is reflected in the resolution adopted by the Governing Council of the American Public Health Association in 1959, as follows:

"1. Public health organizations at all levels of government should give increased attention to the impact of population change on health.

"2. Scientific research should be greatly expanded on

(a) all aspects of human fertility;

(b) interplay of biological, psychological, socio-economic factors influencing population change.

"3. Public and private programs concerned with population growth and family size should be integral parts of the health program and should include medical advice and services which are acceptable to the individuals concerned.

35 Circular to District Offices, Federal Security Agency, U. S. Public Health Service, Feb. 1942.

"4. Full freedom should be extended to all population groups for the selection and use of such methods for the regulation of family size as are consistent with the creed and mores of the individuals concerned." [36]

It has already been noted that contraceptive articles are tested and evaluated by the Food and Drug Administration, so that these articles, outlawed in Connecticut, move freely in interstate commerce. The armed services, as is well known, issue contraceptive devices to military and naval personnel and the civilian side of the federal government complemented this policy during the war when the War Production Board issued an order in January 1942 [List C Supplementary Order No. M 156, as amended] permitting manufacture of contraceptives for men and women at 100% of the 1940-41 production level.[37]

At the present time, the National Institute of Health [42 U. S. C. §203 (1944)] has made grants for 32 projects for medical research in areas related to fertility, sterility and human reproduction. It was recently reported that the National Institute would consider applications for research designed to make the "rhythm" method more reliable.[38]

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36. 49 *American Journal of Public Health*, No. 12, Dec. 1959.

37. Referred to in Tileston v. Ullman, 129 Conn. 84, 26 A. 2d. 582 (1942), dissenting opinion at p. 96.

38. N. Y. Times, January 16, 1960. The National Institute of Health statement was in response to a query which followed a broadcast by Rev. James A. Pike, Episcopal Bishop of California, who had stated on January 14, 1960, on "The Population Explosion" a Columbia Broadcasting System television program: "Let our government, as it has done in regard to death control * * * turn its attention * * * to a crash program to improve all methods of family planning and * * * to make more reliable, by research, the rhythm method, a program which Pope Pius XII, himself, has called for * * *." *C.B.S. Reports*, "The Population Explosion," January 14, 1960.

C. "Contemporary Community Mores" and Medical Prescription of Contraceptives

As we have pointed out above, the Connecticut ban on medical prescription of contraceptives in cases of medical need such as those here presented traces its origin to the Connecticut "obscenity" law. This Court has recently held that "contemporary community mores" are relevant in the determination of obscenity. *Roth* v. *United States*, 354 U. S. 476 (1957). We have seen above what the mores are with respect to the questions herein presented in the field of medical practice, religious principles, and official state and local attitudes and activities. The views and opinions of the general public which constitutes the "community" may also be of interest.

According to a poll reported by Dr. Alan F. Guttmacher in 1947, 93% of the obstetricians, gynecologists and general practitioners polled stated that their patients requested contraceptive advice. 62.2% of the physicians reported that they were asked for such advice frequently and 30.5% occasionally.[39] Dr. John Rock, another eminent physician, has stated that 90% of the married population in the United States uses some method of contraceptive control.[40]

Public opinion polls on the subject of family planning even in the absence of medical need have been conducted with considerable frequency. Most recent is one taken by Dr. Gallup in 1960 which found that across the country

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39. "Conception Control and the Medical Profession," *Human Fertility*, 12:1, March, 1947.

40. "Medical and Biological Aspects of Contraception: The Scientific Case Against Rigid Legal Restrictions on Medical Birth Control Advice," *Clinics*, 1:1598, April 1943.

72% of the populace answered "Yes" to the question "Do you think birth control information should be available to anyone who wants it?" Only 14% answered "No."[41]

Fortune magazine has conducted a number of polls. In 1943, 84.9% answered "yes" to the question "Do you believe knowledge about birth control should be made available to all married women?"[42]

The 1960 Gallup Poll also found that 54% of Americans favored extension of our government's aid to other nations for the purpose of making birth control available.[43] This question came to public notice after the report[44] to President Eisenhower by the President's Committee to Study the United States Military Assistance Program, popularly called the "Draper Committee."

A scholarly study conducted by the University of Michigan and the Scripps Foundation for Research in Population Problems showed that nearly five out of six white couples of a national cross section sample had taken steps to limit the number of their children, and another 7% said that they intended to take such steps after they had one or more wanted children. The report stated:

> "Family limitation is now almost universally approved and is practiced widely and effectively . . .

41. New York Herald Tribune, Feb. 18, 1960.

42. *Public Affairs Pamphlet*, No. 136, Planning Your Family, by Herbert Yahraes, 1953. Fortune reported that among Catholic women 69% answered "yes" (*ibid.*).

43. 29% were opposed; 17% had no opinion. New York Herald Tribune, Feb. 18, 1960.

44. Report to the President on Economic Assistance Programs and Administration, July 13, 1959.

> A significant minority of couples have more children than they want * * *. It seems probable that the number of couples in this unhappy position will decrease in future years, in part because research will improve methods of limitation, but also in part because a rising general level of education will provide more couples with the personal qualifications and the information required for effective family planning." [45]

It is noteworthy that the 1960 White House Conference on Children and Youth issued the following resolution:

> "We recommend that planning for the size of families is desirable in order to relieve the deprivation of children. Thus, facilities and programs on a local public or private basis should be available to married couples to provide medical advice and services for child spacing. These should be consistent with the creed and mores of the families served." [46]

Similarly, in 1959, a study prepared for the Foreign Relations Committee of the Senate by The Stanford Research Institute concluded:

> "* * * There is nothing to suggest complacency in the face of the world's threatening population and production problems * * * Population control will become imperative * * * Current scientific developments indicate that a radical advance in techniques, such as a safe, effective and inexpensive oral contraceptive, could soon be available if the comparatively small

45. Freedman, Whelpton and Campbell, *Family Planning, Sterility & Population Growth*, McGraw-Hill, 1959 at p. 401. This study also reported that 88% of the Protestants included in the study adopted birth control measures compared to 70% of the Catholics.

46. New York Times, Jan. 24, 1960.

amount of research now under way in this field were stepped up * * * *"[47]

It is apparent that mid-twentieth century American "community mores" are not offended by family planning. On the contrary, most Americans deem conception control normal and proper and a great many consider it a moral obligation. We venture to suggest that most Americans would consider offensive the notion that the state should prohibit those of its married citizens who have urgent medical need for contraceptives from using them, and as a necessary incident thereto, prohibit their physicians from following the mandates of their profession.

POINT IV

Under the relevant due process tests the challenged statutes are arbitrary and unreasonable deprivations of appellants' life, liberty and property in violation of the 14th Amendment.

A. There is no reasonable basis for the challenged legislation.

On the basis of the foregoing, we submit it is clear that the challenged statutes find no reasonable basis in the facts of record or the facts of medical science, religious position or contemporary community mores. Even if, however, we were to concede, *arguendo*, that the statutes do serve in some degree "the public morals, the public safety and the public health," they would still be unconstitutional under other relevant due process tests.

47. "Possible Non-Military Scientific Developments and Their Potential Impact on Foreign Policy Problems of the U. S." (1959).

B. The challenged legislation is not "reasonably restricted to the evil with which it is said to deal."

The absolute prohibition in these Connecticut statutes of the use by and medical prescription for married persons of contraceptives under any and all circumstances regardless of their medical need, is a fiat not "reasonably restricted to the evil with which it is said to deal." *Butler* v. *Michigan*, 352 U. S. 380, at p. 383 (1957). The means are "greatly in excess of the need"; Holmes J. in *Engel* v. *O'Malley*, 219 U. S. 128 at p. 136 (1908). See also *Schneider* v. *Town of Irvington*, 308 U. S. 147, 162 (1939), invalidating an ordinance requiring a permit for distribution of leaflets: "There are obvious methods of preventing littering. Amongst these is the punishment of those who actually throw paper on the streets."

States other than Connecticut concerned with indiscriminate distribution of contraceptives—or with their intended market or their quality—have found it possible to enact various regulations to protect the public health, safety and morals without going to the extreme of prohibiting the medical profession from doing its duty in this field. See Appendix E hereto. Similarly, with respect to the federal government, neither the courts, the Food and Drug Administration, the Federal Trade Commission nor the Post Office Department have found it necessary to impose a total prohibition on essential medical practice. Inspection, licensing, official testing, legislative proscription of dangerous methods, compulsory channeling of distribution via the medical profession and/or the drug trade, all these were available to the legislature of Connecticut. But the Connecticut legislature chose instead to "burn down the house to roast the pig," a choice not constitutionally available to it under *Butler* v. *Michigan supra*.

C. General statutes impinging on life and liberty such as those challenged herein may not be applied as in the instant cases to impose excessive hardships on particular individuals.

As far back as *Jacobson* v. *Massachusetts*, this Court said:

> "Before closing this opinion, we deem it appropriate, in order to prevent misapprehension as to our views, to observe—perhaps to repeat a thought already sufficiently expressed, namely—that the police power of a state, whether exercised by the legislature, or by a local body acting under its authority, may be exerted in such circumstances or by regulations so arbitrary and oppressive in particular cases as to justify the interference of the courts to prevent wrong and oppression. Extreme cases can be readily suggested. Ordinarily such cases are not safe guides in the administration of the law. It is easy, for instance, to suppose the case of an adult who is embraced by the mere words of the act, but yet to subject whom to vaccination in a particular condition of his health or body would be cruel and inhuman in the last degree. We are not to be understood as holding that the statute was intended to be applied to such a case, or, if it was so intended, that the judiciary would not be competent to interfere and protect the health and life of the individual concerned. 'All laws,' this court has said, 'should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression or absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language which would avoid results of that character. The reason of the law in such cases should prevail over its letter.' *United States* v. *Kirby*, 7 Wall. 482; *Lau Ow Bew* v. *United*

States, 144 U. S. 47, 58. Until otherwise informed by the highest court of Massachusetts, we are not inclined to hold that the statute establishes the absolute rule that an adult must be vaccinated if it be apparent or can be shown with reasonable certainty that he is not at the time a fit subject of vaccination or that vaccination, by reason of his then condition, would seriously impair his health or probably cause his death. No such case is here presented." 197 U. S. 11 (1905), at pp. 38-39.

The situation hypothesized by this Court in *Jacobson v. Massachusetts* is actually presented in these cases. Since the lives or health of the appellants Doe and the Poes will be thus jeopardized, the Connecticut statutes here under review are, we submit, clearly unconstitutional as to them. Cf. *Skinner v. Oklahoma*, 316 U.S. 534, 541, (1942): "We are dealing here with legislation which involves one of the basic civil rights of man. Marriage and procreation are fundamental to the very existence and survival of the race."

D. The challenged statutes unreasonably prohibit the best and safest medical solutions of appellants' problems; they foster, however, the use of techniques and articles which are dangerous, unreliable and indiscriminate.

It is conceded on the Record that the appellant Buxton is prohibited from prescribing and the appellants Doe and the Poes are prohibited from using methods of contraception which are "the best and safest preventive measure" available to meet their particular and very real health problems (R. 33).

What does that leave as alternate solutions of their medical problems? Abstinence, which, as shown *supra*

pp. 22 to 24, and in Appendix D, is, in the opinion of the majority of the medical profession, no alternative at all. Presumably, it might also leave rhythm. However, rhythm is simply partial abstinence, i.e., the refraining from sexual intercourse at certain specified periods, and as suggested in footnote 30, *supra*, is not a practicable alternative either. Furthermore, rhythm devices to be applied in and to the body, such as thermometers, tampons, chemicals and the like, may well fall within the ban of the Connecticut statutes. (See *supra* pp. 36-37)

And while Connecticut forbids all use of "drugs, medicinal articles or instruments" for the prevention of conception, regardless of medical need, it allows the drastic and more dangerous medical solutions of abortion and sterilization. (General Statutes of Connecticut, Sections 17 to 19; Sections 53-29 [Revision of 1958]; Calderone, *Abortion in the United States*, Hoeber-Harper (1958); cf. *Report of The Royal Commission on Population*, H. M. S. O. (1949), p. 159, where it is stated:

> "Our survey of the history of family limitation leaves us in no doubt that if these methods [use of drugs, medicinal articles and instruments] were not available, other means would be used and some of them, e.g., criminal abortion, the prevalence of which is even now, alarmingly high, are very undesirable."[48]

48. See Calderone, *Abortion in the United States* (*supra*, note 34), at p. 188:

> "Taking into account the probable trend of the abortion ratio since the interwar period, a plausible estimate of the frequency of induced abortion in the United States could be as low as 200,000 and as high as 1,200,000 per year, depending upon the assumptions made as to the incidence of abortion in the total population as compared with the restricted groups for which statistical data are available, and upon the assessment of the direction and magnitute of bias inherent in each series of data.

Moreover, it is in any event impossible to prevent people in desperate need from using any "drug, medicinal article or instrument" they can lay their hands on and believe may be efficacious to prevent conception: syringes, vaginal suppositories, jellies and foam powders, condoms etc. There is a demand for any device—those which are medically accepted, also those which are not considered medically safe or reliable. Many articles are capable of a contraceptive use and another use such as feminine hygiene or prevention of venereal disease. Presumably, in cases involving such products the prosecution must prove that the use was to prevent conception and not for the purpose of preventing disease, notwithstanding the fact that the *use* is identical in both cases. Compare *Commonwealth* v. *Corbett*, 307 Mass. 7, 29 N. E. 2d 151 (1940); *Commonwealth* v. *Werlinsky*, 307 Mass. 608, 29 N. E. 2d 150 (1940).

Thus what we have here is a ban only on the use of drugs, medicinal articles and instruments which doctors prescribe expressly for contraceptive purposes for married persons in instances of medical need. For other purposes, anyone in Connecticut can as a practical matter use any

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There is no objective basis for the selection of a particular figure between these two estimates as an approximation of the actual frequency."

See also Memorandum from Zad Leavy, Deputy District Attorney to Joseph B. Busch, Jr., President Association of Deputy District Attorneys, Los Angeles County, re "Proposed Legislation Amending Abortion Statutes, May 2, 1960:"

> "There will be in 1960 in excess of one million illegal abortions in the United States with probably more than 5000 deaths as the result of abortions induced by unskillful hands. One out of every four or five pregnancies in this country will be terminated unlawfully."

drug, medicinal article or instrument he pleases. A clearer instance of unreasonableness of classification would be hard to find. And whereas the presecription of contraceptives by physicians for married persons in situations of medical need can be supervised, checked and controlled, other non-medical contraceptives such as rhythm devices and those mentioned above are freely available to all regardless of age or marital status. The statutes, in other words, serve only to prohibit the prescription by doctors of reliable advice and materials for their married patients in cases of medical necessity—although such prescription is clearly in the direction of "public health, safety and morals" which they are supposed to serve.

The decision below commands a non-medical solution of a medical problem, and is thus *prima facie* arbitrary and unreasonable.

Conclusion

We submit that the Connecticut statutes, as interpreted below and as applied to the appellants, bring before this Court a situation to which the terms "arbitrary and capricious" if applicable anywhere are *par excellence* applicable.

The only justification for depriving these appellants, on the one hand of the means to preserve health and happiness and on the other of the right to practice the healing arts, is the vague and unsubstantiated reference below to "public health," "public safety" and "public morals." We doubt whether this Court has often before been asked to sanction such harsh blows to human rights on so flimsy a justification (*Cf. Skinner* v. *Oklahoma, supra*).

There is no factual support for the notion that the deprivation caused by these laws contributes to public health, safety or morals. On the contrary, these laws, as applied to these appellants, and others similarly situated can lead only to deterioration of health and demoralization of standards. There is no reasonable relation between the ban on medically prescribed contraceptives for married people and any proper public purpose. These statutes are thus "lacking in the first principles of due process" (Stone C. J. concurring in *Skinner* v. *Oklahoma*, *supra*).

And even if there were no "limits to which the presumption of constitutionality can be pressed" (*Ibid*)—so that in spite of the known facts some legislative purpose were assumed, it would nevertheless be obvious that whatever the assumed purpose, it could not justify the cost in human life and liberty here involved. It is difficult to conceive of any circumstances which would justify the result caused by these laws. *Cf. Sweezy* v. *New Hampshire*, 354 U. S. 234 (1957). Regardless of whether the "public health" or the "public safety" or the "public morals" is said to be at stake, it is capricious to prohibit doctors from prescribing contraceptives for married persons whose health and lives are in jeopardy and to prohibit such persons from using the prescribed articles.

The cost of these laws in human freedom, health and dignity cannot be defended. We submit that, if the concept of due process of law as an expression of "civilized standards of law" [Frankfurter, J., concurring in *Malinski* v. *New York*, 324 U. S. 401 (1945), at p. 414] has any

meaning whatever, it must apply to strike down the laws of Connecticut here at issue.

Respectfully submitted,

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APPENDICES TO BRIEF OF THE PLANNED PARENTHOOD FEDERATION OF AMERICA, INC. AS *AMICUS CURIAE*

APPENDIX A

II. Opinions of Medical Text Writers and Authorities as to Medical Necessity for Contraceptive Measures

Adair, Fred L. M.D. Professor of Obstetrics and Gynecology and *Whitacre, Frank E.* M.D. Assistant Professor of Obstetrics and Gynecology, both at Rush Medical School, University of Chicago—*Tuberculosis and Reproduction* (Journal Michigan State Medical Society, Jan., 1932):

"There seems to be general agreement that pregnancy is not desirable in the woman with tuberculosis and should not be permitted for two or three years after cure. This means the use of contraceptive measures."

Beck, Alfred C. M.D. Professor of Obstetrics and Gynecology, State University of New York, College of Medicine at New York City; Professor of Obstetrics and Gynecology, Long Island College of Medicine, Obstetrician and Gynecologist-in-Chief, Long Island College Hospital—*Obstetrical Practice* (Baltimore, Williams and Wilkins, 2nd edition, 1939):

(p. 563): "At one time mitral stenosis was so feared that women with this lesion were warned to remain single. If they married the prevention of conception was recommended * * *. While pregnancy increases the risk in all women who have had a previous break in compensation, the risk is so great in those who are unable to stand the strain of every day activity that they should not become pregnant, and if they do, therapeutic abortion is indicated.

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"When congestive failure occurs in the course of pregnancy the same reasoning should be followed."

(p. 574): "Women with severe nephritis should receive instructions in the use of contraceptives. If pregnancy occurs, therapeutic abortion and sterilization are indicated."

(p. 576): "Following nephrectomy for renal tuberculosis three years should elapse before pregnancy is permitted."

Berkeley, Sir Comyns M.A., M.C., M.D., F.R.C.P., F.R.C.S., M.M.S.A., F.C.O.G. Consulting Obstetric and Gynaecological Surgeon to the Middlesex Hospital, the City of London Lying-in Hospital and the Chelsea Hospital for Women; Consulting Gynaecological Surgeon of the Radium Centre, L.C.C.; Chairman of the Central Midwives Board; Examiner in Midwifery and Diseases of Women to the Universities of Birmingham, Bristol, Cambridge, Leeds, Liverpool, London, Manchester, Oxford, Sheffield, Wales National School, Glasgow, St. Andrews—*Midwifery by 10 Teachers* (London, Arnold & Company, 6th edition, 1938):

(p. 185): "Heart disease. Should the patient again become pregnant? This depends upon the class to which the patient has been attributed. If the patient insists upon another child, an interval of at least two years, should, so far as possible, should be insisted upon. Meanwhile contraceptives should be used."

Bland, P. Brooke M.D. Emeritus Professor of Obstetrics, Jefferson Medical College; Consulting Obstetrician, Jefferson Medical College Hospital, Phila., Pa. and *Montgomery, Thaddeus L.*, M.D. (Clinical Professor of Obstetrics, Jefferson Medical College, Phila., Pa.)—

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Practical Obstetrics (Philadelphia, F. A. Davis Company, 3rd edition, 1939):

(p. 171): "Patients with grave valvular heart disease, especially mitral or aortic stenosis, should not marry. If married, pregnancy should be avoided by the practice of contraceptive methods."

(p. 158): "In the face of known kidney disease with or without hypertension the inception of pregnancy should be avoided * * *.

"In cases of evident nephritis with vascular lesions it is questionable whether the obstetrician has done his full duty to the patient by simply terminating the pregnancy, for the situation is likely to recur more acutely with another pregnancy. For this reason it would appear quite rational to instruct such patients in contraceptive measures and warn them against the further occurrence of pregnancy."

British Medical Association—Report of Committee on Legal Aspects of Abortion, 1936:

(p. 23): "The Committee is unequivocally of opinion, that within the range of those medical conditions which render pregnancy dangerous to life and health, the avoidance of pregnancy is to be encouraged as a procedure of double value, in that it protects the woman against the risks to which pregnancy exposes her and at the same time it eliminates the occasion for therapeutic abortion and the temptation to adopt unlawful methods."

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Decker, A., Clinical Professor of Gynecology & Obstetrics, New York Medical College, New York Polyclinic Medical School & Hospital; *Decker, W. H.*, Assistant Clinical Professor of Obstetrics & Gynecology, New York University College of Medicine, Attending Gynecologist Bellevue & University Hospitals. *Practical Office Gynecology* (Philadelphia, F. A. Davis, 1956):

(p. 316): "The physician should determine the patient's physical condition and general health, and the development of her pelvic and sexual organs in relation to her ability to conceive and successfully bear a child. He should inform her truthfully concerning these findings lest a marriage be consummated when there are chronic disorders that might endanger the life of the mother or child should pregnancy occur. It is understandable too that many couples, for economic reasons or when a period of time is desired for sexual and personality adjustments, may wish to postpone pregnancy."

Dickinson, Robert Latou, M.D., F.A.C.S., Former Clinical Professor Obstetrics and Gynecology, Long Island College Hospital; former President American Gynecological Society; American Gynecological Club; New York Obstetrical Society; Brooklyn Gynecological Society and Brooklyn Hospital staff; Vice President Clinical Congress of Surgeons; Lt. Col. Medical Advisor to General Staff Washington, 1918-1919; Senior Consultant Birth Control Clinical Research Bureau; Secretary Committee on Maternal Health. *Control of Conception: Present and Future* (5 Bulletin, New York Academy of Medicine, 413-434, May, 1929):

"The question [of contraception] involves every mother after delivery, who requires instruction in measures to take to avoid pregnancy until she is fit to bear another

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child; it includes every convalescent from operation or real illness and every woman worn down by imperative overwork. And the doctor who does not help to prevent the start of a pregnancy that he is persuaded will run his patient down further: how does he excuse himself for a neglect of ordinary health protection? . . . ."

Dickinson, Robert Latou, M.D. (see above) *"Control of Conception"* (Baltimore, Williams & Wilkins, 2nd Edition, 1938):

(p. 352): "Three great strides of medicine are towards:

Control of pain in labor and operation;
Control of infection in labor and operation;
Control of communicable disease.

"These three advances made in the face of opposition and indifference on the part of the organized profession, are now its common pride and glory.

A fourth control, control of conception, needed to safeguard life and health and happiness . . . will take its place of honor with these others. Courage and wisdom were required to restrain the forces of disease and death. A greater courage and a higher wisdom are called for within our profession to undertake a guiding part in the control of life."

Douglas, R. Gordon M.D. Assistant Professor of Obstetrics and Gynecology, Cornell University Medical College, New York. *Hypertension, Nephritis and the Toxemias of Pregnancy* 34 American Journal Obstetrics and Gynecology, 565-575, October, 1937:

"Prevention of pregnancy in patients with definite evidence of cardio renal vascular disease is not only justifiable but is an essential part of our obstetric care of patients."

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Eastman, Nicholson J. M.D. Professor of Obstetrics, Johns Hopkins University: *The Aims of Birth Control and Their Place in Preventive Medicine*, New International Clinics 1: Series 5, 1942:

(pp. 274-5): "*Repeated Toxemias of Pregnancy.* * * * After a patient has had a hypertensive toxemia of pregnancy, no further conception should be permitted until all traces of the complication, including even slight hypertension, have disappeared. At an early date in the puerperium, the patient should be instructed in contraceptive technic and its importance in her particular case stressed. After all traces of the previous toxemia have disappeared, another conception may be permitted provided that both husband and wife understand that there is about one chance in three of recurrence and, moreover, that interruption of the pregnancy at one stage or another may possibly become necessary in order to safeguard the woman's health."

(pp. 276-7): "*Rheumatic Heart Disease.* * * * if there are signs or history of failure or of auricular fibrillation, pregnancy increases the risk almost three-fold.

"In view of these facts it would seem logical to interdict pregnancy in all women * * * who suffer from auricular fibrillation; * * * this is a rule which should seldom be broken."

(pp. 279-280): "*Diabetes Mellitus.* * * * These dangers faced by the diabetic mother are clear evidence that stringent family limitation is essential for her safety. The degree to which the family is curtailed will depend, of course, on the individual case and on such factors as the severity of the disease, the ardency of the woman's desire for a child, and on her ability to co-operate with the physician. In general, however, one or two children

would seem to represent an ample risk for most diabetic women."

(pp. 280-284): "*Chronic Pyelitis.* * * * It is the accepted rule, therefore, that all such patients must use contraceptive measures postpartum, not only until urinary sterilization has been achieved but until the urinary tract has remained pus- and bacteria-free over a two-year period."

(p. 281): "*Previous Cesarean Section.* With the increasing use of Cesarean section, the integrity of the uterine scar in subsequent pregnancies is rapidly becoming one of the most common—as it is certainly one of the most difficult—problems * * * The frequency with which cesarean section scars rupture in later pregnancies and labor has been variously estimated * * * The cesarean section scar, therefore, is never to be trusted completely * * * This danger is usually met by tubal sterilization after the second or third operation, but occasionally circumstances will arise in which the physician will * * * protect such a patient from further pregnancies by vaginal occlusive technics."

(p. 283): "*Great Multiparity.* * * * Because of the high maternal and fetal mortality associated with bearing more than eight children and in view of the transcendant value of such a mother to her family, women of this parity should be urged to use contraceptive measures on the sole basis of great multiparity. If contraception fails or if husband and wife both desire it, sterilization is justifiable."

(p. 300): "*Economic Distress.* * * * The question has been asked * * * whether it is sound preventive medicine to allow baby after baby to be born into homes where poverty exists * * * it is the reviewer's opinion that dire economic distress may very truly constitute a medical

reason for family limitation * * * it is believed that birth control will find some of its greatest usefulness in this field —and if you will, on strictly medical grounds."

(p. 302): "* * * the medical indications for contraception are manifold and urgent. Its widespread employment promises a major reduction in loss of life and suffering; and it deserves, accordingly, an important place in medical practice."

Eden, T. Watts, M.D., C.M., F.R.C.P., F.R.C.S., F.C.O.G. Consulting Gynaecologist, Charing Cross Hospital and Chelsea Hospital for Women. Consulting Obstetrics Surgeon, Queen Charlotte's Lying-in Hospital, and *Lockyer, Cuthbert*, M.D., B.S., F.R.C.P., F.R.C.S., F.C.O.G. Consulting Gynaecologist Charing Cross Hospital; Samaritan Hospital; Royal Northern Hospital; National Hospital, Queens Square—*Gynaecology for Students and Practitioners* (London, 1935):

(p. 210): "It is an accepted fact that under certain circumstances a woman incurs the possibility of grave danger to life or health should she become pregnant. Chronic renal disease, active pulmonary tuberculosis, and serious cardiac lesions are, for example, generally regarded as being adversely influenced by the pregnant state, and should a gestation occur, therapeutic abortion is advocated and practiced and has legal sanction. * * *

"Birth control in its medical applications is an important aspect of preventive gynaecology * * *".

"*Indications.* The giving of contraceptive advice will naturally depend largely upon the individual views of the practitioner consulted. In general the indications include all those conditions where should pregnancy occur, therapeutic abortion would be performed, e.g., serious chronic

lesions involving the heart, lungs or kidneys, grave degrees of anaemia, co-existing malignant disease, certain mental states, etc. In addition it may be expedient to prevent temporarily, as in the case of high fertility and too rapidly repeated pregnancy, during complete convalescence from various diseases or after operations, e.g. Caesarean section and for prolapse of the pelvic viscera. This list, whilst in no sense complete, will indicate the type of problem with which the practitioner is commonly presented, and unless proper advice is given the outcome may be undesirable."

Greenhill, J. P., B.S., M.D., F.A.C.S., F.I.C.S. Attending Obstetrician and Gynecologist, Michael Reese Hospital; Professor of Gynecology, Cook County Graduate School of Medicine; Attending Gynecologist, Cook County Hospital; Editor of the "Year Book of Obstetrics and Gynecology; author of "Obstetrics in General Practice," "Surgical Gynaecology" and "Principles and Practice of Obstetrics," (11th Edition)—*Office Gynecology*, (Chicago, The Year Book Publishers, 6th Ed., 1954):

(p. 290): "Some form of conception control is practiced by nearly all married couples except those who know they are sterile * * *. The more satisfactory conception control is, the fewer will be the number of criminal abortions and the better the physical health and mental attitude of a large number of women. The chief reason, among the many, for controlling conception, is any complication that pregnancy would aggravate to the extent of endangering the patient's life. Among these complications are cardiovascular-renal disease, heart disease and pulmonary tuberculosis. Mental conditions, particularly the few which are inheritable, are also indications for the use of contraceptives."

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Hannan, John, M.D.; Hon. Physician, Saffron Hill Maternity Centre, Holborn; late Registrar and Pathologist to the Hospital for Women, Soho Square, London—*Abortion* (Medical Press and Circular, No. 5108, 279, March 31, 1937):

"* * * it seems to me that contraception offers the only effective and rational solution of this problem of abortion. By contraception I mean the instruction of women in the use of such appliances as will prevent the union of the spermatozoa with the ovum.

"Such is human nature that no method which is left to the man to utilize is of any practical value.

"In my experience, the adequate instruction of women at a good contraceptive clinic, with the combined uses of occlusive pessary and spermicidal substance, is sufficient for all except those who are extremely ignorant and careless."

Holden, Frederick C., M.D. Professor Emeritus, Obstetrics and Gynecology, New York University College of Medicine—*Why Women Die in Childbirth* (38 Pennsylvania Medical Journal 157-160, December, 1934):

"* * * the medical profession must take the lead in bringing proper and safe birth control information to the woman who is in need of such advice. Birth control clinics should not be considered as entities apart from other organized medical service. * * * the birth control clinic should be an integral part of every obstetrical service and every patient should be given proper contraceptive instruction as part of her post natal care. The woman should also be educated as to what is safe and what is dangerous as a contraceptive measure * * *. This question has been left too long in the field of personal controversy. It should

be included in all maternal welfare programs under the direction of the medical profession."

Jauncy, J. C., M.D. New England Obstetrics & Gynecological Society; American College of Surgeons; Professor of Gynecology at Boston University School of Medicine—*Medical Gynecology* (Philadelphia: W. B. Saunders, 1950):

(p. 385): "Regardless of the legal prohibition contraception is recognized and demanded by the public, and even in localities where it is absolutely forbidden all persons desiring it may secure it through bootleg sources. In the majority of cases, contraception seems to be a method of family planning which is used with the aim of spacing the children, protecting the mother and insuring a standard of living which will give the children a good start.

"Medical indications for the control of conception include those complications which pregnancy would aggravate to the extent of endangering the patient's life or health. Among these are nephritis, pulmonary tuberculosis, and heart disease. An inheritable mental condition in the patient or her husband is an indication."

Jeffcoate, T. N. A., M.D., F.R.C.S., F.R.C.O.G. Professor of Obstetrics and Gynecology at the University of Liverpool—*Principles of Gynecology* (London: Butterworth & Co., 1957):

(p. 578-580): "Contraception is the prevention of conception by methods other than abstinence from coitus; its use to limit the size of family is birth control or family planning. Contraception is practiced at some time by not less than 70 per cent of married couples in England and Wales and the percentage is ever increasing. It is there-

fore a matter on which medical advice is frequently sought.

"Contraception aims at separating the means from the end, at affording the partners of a union free expression of their mutual affection and satisfaction of their sexual needs without incurring the risk of unwanted children.

"Contraception has been practiced in one form or another throughout history but it has frequently been countermanded by law or custom. Whenever it has been declared illegal the underlying reason has always been economic or political, for example, the need to increase the number of a community in order to establish national or group dominance. Nevertheless it has often been given a cloak of ethics to hide the real objective * * *.

"Contraception has long been neglected by the medical profession, possibly because of the influence of Victorian prudery, possibly because of political, religious and ethical consideration, and certainly because the instruction of patients in the techniques takes time and trouble. This traditional attitude of aloofness cannot, however, be maintained as it becomes increasingly clear that birth control and pregnancy spacing are essential to the physical and mental health of individuals and of families; and that they occupy a place in preventative medicine which increases in importance as the world population expands.

"* * * Phthisis, nephritis, hypertension, cardiac disease, psychoses, neuroses, blood disorder and any disease which makes a woman less able to withstand the strain of pregnancy and labour, or which makes her unfit to cope with the rearing of another child, call for contraception. Some of these illnesses may not be permanent and the possibility that they will ultimately become arrested, circumvented or cured is an added reason for deferring pregnancy.

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"* * * Recurring pregnancy toxemia, recurrent abortion, repeated caesarean section, repaired obstetrical injuries such as vesico-vaginal fistula, and a previous operation for prolapse can justify the avoidance or deferment of further childbearing.

"Disease transmissible to the foetus—the best examples under this heading are syphilis and haemolytic disease but certain diseases in which inheritance plays a part—epilepsy, deaf mutism and haemophilia—deserve mention. Contraception is often indicated when there is a high risk of offspring being mentally or physically defective, as there is amongst couples who have already had two or more abnormal children.

"Birth spacing—If a woman has children too frequently, she has no time to recover from one before she is faced with the next. * * *

"Family Limitation—Some women, constitutionally well fitted, remain physically sound and of equable temperament despite having large families but the majority have a limited capacity for safe reproduction. In general the danger to the mother and the child rise with each pregnancy after the fourth or fifth. The 'dangerous multipara' should be prevented rather than treated."

Knopf, S. Adolphus, M.D. Former Professor of Physiotherapy, New York Post Graduate Medical School and Hospital—*Various Aspects of Birth Control*. (New York, 1928):

(p. 12): "The meaning of the words ['birth control'] is beginning to be rightly understood as designating scientific humane and harmless methods of preventing conception * * * to be made use of in cases where pregnancy may cause physical, mental, or economic suffering, or death. It is life saving and not life destroying * * *."

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(p. 83): "Medical schools * * * should include lectures on birth control in their curricula and physicians seeking instruction in contraceptive methods as well as in producing or curing sterility, should be entitled to receive gratuitous instruction in official birth control clinics.

* * * Birth control clinics, under * * * medical supervision, and under state and municipal auspices, should be established in all larger communities. The birth control clinic should be made self supporting by charging a moderate fee to all able to pay. The research departments of such clinics should be in communication with the federal bureau so that the result might be tabulated, sifted, and verified."

MacLeod, Douglas H., M.S. (London), F.R.C.P. (London), F.R.C.S. (England), F.R.C.O.G: *Gynaecology*, 5th ed., (Boston, Charles D. Reed, Little, Brown & Co., 1955):

(pp. 171-172): "It is the opinion of the writers that medical conditions which are generally considered to call for termination of a pregnancy should be regarded as indications for the giving of contraceptive advice. * * * Serious chronic lesions involving the heart, lungs and kidneys, grave degrees of anemia, co-existing malignant disease and certain mental states all call for effective contraceptive advice."

Menninger, Karl, A., M.D., Member Am. College of Physicians, Am. Psychoanalytic Assn., Am. Psychosomatic Society, Am. Psychiatric Assn., Assn. for Research in Nervous and Mental Disease, Central Neuro-psychiatric Assn. Professor at University of Kansas School of Medicine. Director of Menninger Clinic. Bulletin of Menninger Clinic, *Psychiatric Aspects of Contraception* pp. 38-40, Vol. 7, No. 1, January 1943:

"The reason that contraceptive knowledge and counsel seem to the psychiatrist so essential is based not upon

considerations of the welfare of the adult but upon the considerations of the welfare of the child. Nothing is more tragic, more fateful in its ultimate consequence, than the realization by a child that he was unwanted. * * * This may show itself in a determined campaign or in a provocative program of attracting attention by offensive behavior and even criminal acts. Still more seriously it may show itself as a constant fear of other people or as a bitter prejudice against individuals or groups through deep seated, easily evoked hatred for them. * * * I say that from the purely scientific point of view, planned parenthood is an essential element in any program for increased mental health and for human peace and happiness."

Mudaliar, A. L., B.A., M.D., F.C.O.G., Professor of Obstetrics, Madras Medical College, University of Madras; Second Obstetric Physician and Gynaecologist Government Hospital for Women and Children, Egmore, Madras—*Clinical Obstetrics* (London, Edinburgh, Oliver and Boyd, 1938):

(p. 207): "Tuberculosis. The need for spacing of pregnancy is greater in the tuberculous women than in others; and it cannot be sufficiently emphasized that if marriage be permitted in healed-up cases of tuberculosis there is necessarily a limitation as to progeny. * * *

"If signs of active tuberculosis are found in a woman already married, every care should be taken to see that she does not risk conception."

Wagner, John H., B.S., M.D., F.A.C.P. Professor of Medicine in the Tulane University of Louisiana School of Medicine; Senior Visiting Physician to the Charity Hospital, New Orleans, Louisiana—*Internal Medicine* (Philadelphia, Lea & Febiger, 3rd edition, 1938):

(p. 460): "With a marked aortic insufficiency or a high grade mitral stenosis, there is a likelihood of trouble, and

with an evident reduction in the cardiac function, pregnancy should always be avoided, or, if it occurs, terminated at an early date.".

(p. 600): "In women with glomerulonephritis, whether latent or manifest, pregnancy activates the disease and aggravates it roughly in proportion to the size of the fetus. In such women repeated pregnancies encroach further on the factor of safety of the kidneys and should be avoided."

Novak, Emil, A.B., M.D., D.Sc. (Hon.), F.A.C.S., F.R.C.O.G., (Hon.), Asst. Professor Emeritus of Gynecology, Johns Hopkins Medical School; Gynecologist-in-Chief, Bon Secours Hospital (Baltimore) and Past President of American Gynecology Society, and *Novak, Edmund R.*, A.B., M.D., F.A.C.S.; Instructor and Gynecologist, Johns Hopkins Medical School; Gynecologist, Bon Secours Hospital For Women of Maryland and Union Memorial Hospital, Baltimore—*Voluntary Control of Conception*, (Baltimore, Williams & Wilkins Co., 3rd Edition, 1956):

(p. 696): "As regards the so-called medical indications, there will be little difference of opinion as to the frequent undesirability of pregnancy in the presence of such organic conditions as serious cardiac disease, chronic nephritis, active tuberculosis and diabetes."

Peckham, Charles H., M.D. Associate Professor of Obstetrics, Johns Hopkins School of Medicine—*Chronic Nephritis Complicating Pregnancy* 35 American Journal of Surgery 325-330, February 1937:

"* * * Every woman who has evidence of hypertension or albuminuria at any time during gestation * * * should not contemplate another pregnancy for two years, but should be given contraceptive advice. * * *".

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Peters, John P., M.D. Professor of Medicine, Yale University, School of Medicine—*The Nature of the Toxemias of Pregnancy* 110 Journal of the American Medical Association 329-332, January 29, 1938:

"* * * The only rational treatment is the prevention of pregnancy in women with disease of the arteries and kidneys."

Rock, John, M.D. (Harvard University Medical School) *Maternal Mortality, What Must Be Done About It.* 205 New England Journal of Medicine 962, November 5, 1931:

"One other factor which lessens the risk of maternal death in the Scandinavian countries and in Denmark is that there effective contraceptive practices can be freely taught by able physicians to patients whose physical condition is such that pregnancy and labor will in all probability terminate in death of mother or baby or both, or in serious maternal disablement. * * *"

Rock, John, M.D. (see above) *Medical and Biological Aspects of Contraception* (Clinics, Vol. 1, No. 6, 1598-1600, 1943):

"The intelligent American couple is committed to contraception * * * There are many known inheritable factors which preclude the likelihood of health and happiness of the offspring * * * These factors * * * include diabetes mellitus, feeble-mindedness, dementia praecox, some manic-depressive psychoses, some forms of epilepsy, of blindness and deafness, and of congenital malformations. Easfmian enumerates many other transmissible defects and refers the student to competent authorities for even a more complete list and detailed considerations. While society permits

marriages of individuals bearing these qualities in their genes, if should protect itself by at least making sure that these couples are aware of the best measures known for protection against pregnancy and that any necessary supplies are available to them. * * * No wife should be expected to bear children unless she can do so without serious threat to her own health and reason. The hazard of childbirth is affected, not only by the mother's intrinsic make-up, but by the socio-economic conditions of her family life."

Simpson, J. J. M.D. Professor of Medicine at University of California School of Medicine in Berkeley, San Francisco, Cal. *Heart Disease As a Complication of Pregnancy.* (7. California Medicine, 383-390, May 1949.)

"There are grave dangers of heart failure during pregnancy, labor or the postpartum period in women who have had congestive failure prior to pregnancy or during a previous pregnancy and delivery.

"Decisions as to whether or not to recommend avoidance of pregnancy or therapeutic abortion should depend not alone upon the prospect of death during gestation or at the time of delivery, but also upon the possibility of increased impairment of heart function and physical incapacity of the mother in the postpartum period.

"The exertion of labor, "though generally inconsequential, in some cases may produce sustained oxygen debt."

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Savill, Agnes. M.D., M.A., M.R.C.P.I. Formerly Physician to St. John's Skin Hospital and *Warner, E. C.*, M.D., B.S., F.R.C.P. Physician to Out Patients, Charing Cross Hospital; Senior Physician, Putney Hospital. (Editors)—*Savill's System of Clinical Medicine* (London, Edward Arnold, 11th edition, 1939):

(p. 98): "Heart disease as affected by pregnancy. . . . If signs of failure are present pregnancy must not occur or must be terminated."

"*Shaw's Textbook of Gynecology*," 7th Edition, revised by *John Hopkins*, M.D., M.S., F.R.C.S., F.R.C.O.G.: Obstetrician and Gynecological Surgeon, St. Bartholomew's Hospital; Gynecological Surgeon, Royal Masonic Hospital and Hempstead General Hospital (Royal Free Hospital, Group, London); Examiner in Midwifery to the Universities of London and Cambridge. (London, J. & A. Churchill, Ltd. 1936):

(pp. 295-6): "In certain medical conditions pregnancy may be a threat to health, or even life and is contraindicated temporarily or permanently. Such conditions include active pulmonary tuberculosis, renal disease, severe cardiac disease, severe toxemia in previous pregnancies and puerperal insanity. Limiting the number of pregnancies may be necessary in Rhesus incompatibility. Temporary postponement may be advisable after an operation or debilitating illness. . . ."

Stone, Eric M.D. Attending Surgeon, Gynecology, R. I. Hospital, Providence—*Contraception as Possible Means of Reducing Gynecologic Morbidity* (212 New England Journal Medicine 511-17, March 21, 1935):

"Many repeating hospital patients could have been saved re-entry had they received contraceptive advice after one of their preceding deliveries."

Appendix A

Taussig, F. J. M.D. *Abortion: Spontaneous and Induced* (St. Louis, Mosby, 1936):

(p. 451): "Of all measures suggested for the control of abortion none equals in importance the widespread establishment of clinics for contraceptive advice and provision for the free distribution of contraceptive materials among the poor."

Taussig, F. J. M.D. *Controlling Size of Family* (35 Journal of the Arkansas Medical Society 123, 1938):

"The more we go into the study of preventive medicine, the more we realize that disease is less the product of bacterial invasion than the result of our way of living, and that drugs and surgery avail less in its control than changes in environment, nutrition and the interrelationship of the family. The key-stone in the arch is as a rule the health of the mother. If she becomes an invalid or dies, the physical well being of the children is almost certain to suffer."

Taylor, Frederick, M.D. *Practice of Medicine*, (London, J. & A. Churchill, E. P. Poulton, 15th edition, 1936):

(p. 275): "Heart disease and pregnancy. * * * the presence of auricular fibrillation should be looked upon as an absolute bar" (to pregnancy).

Titus, Paul, M.D. *The Management of Obstetric Difficulties* (St. Louis, C. V. Mosby, 2nd edition, 1940):

(p. 208): "The occurrence of pregnancy in women with active tuberculosis is a great misfortune; its prevention by means of suitable contraceptive measures is to be

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recommended and when patients are too indolent or too ignorant to employ these, operative measures for sterilization should be employed. * * *"

Williams, J. Whitridge, M.D. Former Professor of Obstetrics, Johns Hopkins University, Medical School—*When is Advice Concerning the Prevention of Conception Justifiable* (91 Journal American Medical Association 1241; 1928):

"Where should we stand as medical men? To my mind there can be only one answer, and that is that we must give contraceptive advice whenever it is medically indicated * * * it is just as much our duty to give such advice when medically indicated as it is to advocate the employment of any other prophylactic measure.

"We must advise the multiparous woman suffering from chronic nephritis not to become pregnant, and the same applies to tuberculosis and serious heart disease. Consequently, if we feel that such advice is necessary we must give directions as to how it can be made effective, for if we do one without the other we are failing in our duty as physicians and in great part are wasting our time. I likewise feel that similar advice is indicated when we see a patient steadily going down hill as the result of pregnancies recurring at too close intervals, as well as in certain neurotic and maladjusted women whose entire life is disturbed by a constant dread of pregnancy. Indeed the list of indications might be considerably increased if time and space permitted."

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Williams, John Whitridge, M.D. (see above) *Obstetrics* (N. Y. Appleton-Century, 8th edition, edited by Henricus J. Stander, 1941):

(p. 552): "We regard the occurrence of pregnancy in women with active tuberculosis as a great misfortune, and consequently recommend the prevention of pregnancy by the most available contraceptive methods * * *"

(p. 564): "In multiparous women in whom the [heart] lesion becomes accentuated in each succeeding pregnancy, contraceptive advice is indicated."

(p. 612): "Pregnancy after removal of kidney. * * * When consulted by a woman with one kidney as to the advisability of becoming pregnant, we suggest a thorough evaluation of the capabilities of the remaining organ. Should it be found unsatisfactory we advise contraceptive practices."

Williams, T. J., M.D. Professor of Obstetrics and Gynecology, University of Virginia Department of Medicine—*Factors in Maternal Mortality* (62 Virginia Medical Monthly, 68-74, May, 1936):

"Among the poorly educated portions of our population particularly in the rural, and, in our own state, in the mountainous areas, no attempts at family limitation have been made, so that in this group large numbers of closely spaced pregnancies are the rule. This group, with its higher parities, is important in the maintenance of the high death rate. * * * An important consideration in the maternal mortality rate is the deaths associated with abortion. * * * Eliminating those deaths classed as homicide * * * one is left with the amazing fact that approximately one-fourth of all maternal deaths follow abortions. * * *".

APPENDIX B

I. Resolutions and Recommendations of the Organized Medical Profession Regarding the Medical Necessity for Conception Control and the Use of Drugs, Medicinal Articles and/or Instruments for That Purpose

A. National Medical Associations

(1) The resolution adopted by the House of Delegates of the American Medical Association in 1937 is printed in the text of the brief. (Point II, A).

(2) In 1938 the Section on Obstetrics and Gynecology of the American Medical Association noted the 1937 resolutions of the House of Delegates and adopted the following recommendation of the Committee to Study Contraceptive Practices and Related Problems:

> "Resolved that the Section on Obstetrics and Gynecology of the American Medical Association heartily endorses the adoption of these recommendations, congratulates the Association on its stand, and in view of the urgency of the situation requests early action in accordance with said recommendations."[1]

(3) In 1938 the Section on Nervous and Mental Diseases of the American Medical Association passed the following resolution:

> "WHEREAS, State and Federal legislation governing the control of conception is conflicting, and renders certain phases of medical practice illegal, it is important that the profession of medicine as a whole should clarify and lead in these questions involving medical

1. Journal of the American Medical Association, July 9, 1938.

practice and procedure. The importance of such control in medical practice where such control constitutes a therapeutic measure is obvious to enlightened lay opinion throughout the civilized world and should be obvious to all medical men not medievally minded; Therefore be it:

"RESOLVED, that we hereby recommend the alteration of the existing laws wherever necessary, so that physicians may legally give contraceptive information to their patients; * * *"[2]

(4) In 1935 the American Gynecological Society, which is a national group of specialists practising in that field, adopted the following resolution:

"Whereas: State and Federal legislation governing the control of reproduction is conflicting and renders certain phases of medical practice illegal, it is important that the medical profession as a whole should undertake to clarify and lead in these questions which involve medical practice, and procedures. The importance of such control in medical practice, where such control constitutes a therapeutic measure is obvious to all medical men."[3]

(5) In 1936 the American Neurological Association, a national group of specialists in that field, adopted a resolution recognizing that " contraception is a necessary and vital part of preventive medicine; * * * Contraception is also of great importance in the treatment of some

2. Journal of the American Medical Association, July 2, 1938.

3. (4) "Gynecological Transactions," LII (1936).

neuropsychiatric conditions, especially of anxiety states due to the fear of pregnancy."[4]

In 1937 the American Neurological Association adopted a second resolution urging the American Medical Association to consider the matter of teaching of contraception and medical supervision of contraceptive clinics in hospitals, stating in part:

> "The time has passed for discussion and debate * * * the physician is now free to use contraceptives in his practice and should be educated in their use."[5]

(5) In 1939 the American Association of Medical Students adopted the following resolution:

> "Be it resolved: that the Association of Medical Students go on record as advocating the adequate instruction—both didactic and clinical—in the indications for and techniques of contraception, as an integral part of the medical curriculum."[6]

(6) The resolution adopted by the Governing Council of the American Public Health Association appears in the text of the brief. (Point III, B, 2).

4. "Transaction of the American Neurological Association" 1936 The William Byrd Press, Inc., Richmond, Va., p. 205.

5. "Transactions of the American Neurological Association" 1937 The William Byrd Press, Inc., Richmond, Va., p. 197.

6. 3 Journal of the Association of Medical Students 1938-40, in Feb. 1939 edition, No. 5, Convention Resolutions, pr 85.

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B. State and Regional Medical Associations

In 1931 the Connecticut State Medical Society became one of the first state medical societies to make a policy statement as follows:

> "The Connecticut State Medical Society is concerned solely with the medical and public health aspects of Birth Control. The present Connecticut statutes provide for the legal performance of abortion in the presence of tuberculosis, heart disease, nephritis and other serious diseases. With this in mind it appears reasonable that our patients be further safeguarded by legalizing the dissemination of contraceptive advice for medical purposes, by licensed practitioners * * *"[7]

A further statement made in 1932 appears in the text of the brief. (Point I A).

In 1931, the New York Academy of Medicine adopted a report of its Committee on Public Health Relations recommending that hospitals offer more contraceptive services in charge of experienced gynecologists and that the medical schools and hospital clinics should offer instruction in contraceptive services and the indications for their use.[8]

The Academy stated: "The public is entitled to expert counsel and information by the medical profession on the important and intimate matter of contraceptive control."[9]

7. Proceedings of the Connecticut State Medical Society, 1931, p. 76.

8. Bulletin New York Academy of Medicine, April 1931.

9. "Anatomy of a Victory," Planned Parenthood Federation of America, Inc., 1959, Appendix I.

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In 1945, the same Committee conducted a further study. The Academy considered this question again and adopted a report in 1946 recommending that:

"1. The New York Academy of Medicine . . . should assume leadership in the recognition of medically indicated contraception as an integral and essential part of preventive medicine.

2. Contraceptive advice should be given by well trained physicians, both in their offices and in hospital clinics, only when on the basis of a thorough medical study, they are professionally and morally satisfied that such action is justified. Child-spacing should be recognized as a medical indication.

. . . .

4. Inasmuch as family-planning advice is a health service, private physicians and hospitals, as well as the proper health authorities, should assume the responsibility of providing it." [10]

The Academy, in 1958, reaffirmed the 1946 action.[11]

In 1938, the Alabama State Medical Association,[12] and the Arizona [13] and South Carolina State Medical Associa-

10. Bulletin New York Academy of Medicine, October 1946, p. 555.

11. Letter from Dr. H. D. Kruse, Executive Secretary of the Academy, to New York City Hospitals Commissioner Dr. Morris Iscobs, dated January 7, 1958, reprinted in "Anatomy of a Victory," published by the Planned Parenthood of America, 1959, Appendix II.

12. "Resolutions Dealing with Child-Spacing Programs Passed by State Medical Societies." Planned Parenthood Federation of America, Inc., p. 1.

13. *Ibid.*, p. 2.

tigis[15] each adopted resolutions concurring in the action of the American Medical Association endorsing contraception. In the same year, the Arizona State Public Health Association took action similar to that which had been taken by the medical society of that state.[16]

In 1939, the Georgia State Medical Association, taking note of the action of the American Medical Association, further stated that:

> "whereas, the public has no place and no one to whom they can go for authentic information except the regular qualified physician."

"Be It Resolved:

> "That the State Board of Health be requested to furnish contraceptive information upon the application for same by any licensed physician, or upon application for same by any Public Health official, or County Health Officer of this State.

"Be It Understood:

> "That this information be furnished only to those patients for whom the physician deems it necessary for the proper spacing of pregnancies, and for the protection of the life of the expectant mother."[17]

15. [illegible] p. 2

16. [illegible] p. 2

17. [illegible] p. 2

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In 1940, the State Medical Association of Texas passed the following resolution:

"Whereas, there has been, and is now, much interest in maternal health and child welfare and much confusion in the minds of the public as regards the medical field of contraception, and

"Whereas, the prevention of conception in appropriate cases has always been a proper problem for the practice of medicine; therefore,

"Be It Resolved: That the teaching and study of scientifically correct methods of prevention of conception and the actual practice of prevention is a suitable subject for teaching and study in medical colleges and in recognized, professionally controlled, women's clinics."[1]

In 1942, the Florida State Medical Association adopted the following resolution:

"Whereas, The Maternal Welfare Committee of the Florida State Medical Association has been given the responsibility of investigating and recommending action to the Association on matters pertaining to maternal welfare, and

Whereas, The death rate due to conditions associated with pregnancy in Florida is higher than any other State in the United States, and

Whereas, The Florida State Medical Society at its meeting held in Ocala in May, 1935, sought leadership from the American Medical Association with regard to the dissemination of fertility information in cases

[1] Texas State Journal of Medicine, June 1940, p. 140.

where it is necessary to conserve the life or health of mothers, and

Whereas, The public looks to the medical profession for leadership in medical and scientific matters involving the health of women of the State; Therefore,

Be It Resolved: That the Florida Medical Association encourages physicians to accept the responsibility for giving such information relating to pregnancy, spacing and fertility as each physician may deem it necessary to his patients, and reaffirms its belief in the physician-patient relationship; and

Be It Further Resolved: That the Association approves this principle in connection with the maternity clinics being conducted by the State Board of Health for indigent patients."[18]

In 1942, the Medical Association of Virginia passed the following resolution:

"Whereas, The Maternal Health Committee of the Medical Society of Virginia has been given the responsibility of investigating and recommending action to the Society on matters pertaining to maternal health,

"Therefore, Be It Resolved:

"1. That the Medical Society of Virginia encourage private practitioners to accept the responsibility for giving information relating to the prevention of pregnancy to those patients for whom the physician believes contraceptive procedures to be indicated for medical reasons.

18. 28 Journal of the Florida Medical Association 537, April 14, 1942

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"2. That indigent prenatal patients should attend maternal and child health clinics, operated under the direction of the State Health Department, be encouraged to return to these clinics for postnatal care, and that they be given birth control information and advice as part of the clinic routine, if such information and advice is thought by the clinician in charge to be indicated for medical reasons.

"3. That procedures for contraceptive advice be made available to patients in the State operated sanatoria for treatment of tuberculosis patients if, and when, satisfactory arrangements can be made by the State Health Commissioner.

"4. That interested lay persons be encouraged to supply, upon request by local physicians, material for carrying out contraceptive procedures for those patients not able to secure such material otherwise."[19]

Numerous other State Medical Societies have, from time to time, passed resolutions similar to those quoted.[20]

In September 1958, the New York City Board of Hospitals issued a resolution which stated:

"1. When there are clearly defined medical conditions in which the life or health of a woman may be jeopardized by pregnancy, it is generally recognized by the medical profession that contraceptive measures are proper medical practice.

"2. Municipal hospitals should provide such medical advice, preventive measures and devices for female

19. 69 Virginia Medical Monthly 514, September 1942.

20. See footnote 12, *supra*.

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patients under their care whose life and health in the opinion of the medical staff may be jeopardized by pregnancy and who wish to avail themselves of such health services.

"3. Physicians, nurses and other hospital personnel who have religious or moral objections should be excused from participation in contraceptive procedures."[21]

On March 18, 1959 the Chicago Gynecological Society passed the following Resolution:

"Inasmuch as family planning advice is a health service, physicians, hospitals and appropriate public health authorities who believe in this should assume the responsibility of providing it."

"As specialists in the field of Obstetrics and Gynecology, we wish to emphasize our conviction that the proper prescription of child-spacing measures is an important and, indeed, essential aspect of preventive medicine and should be available to all patients who desire it, whether they obtain their medical care through private physicians or tax and community supported health services.

"We believe family planning to be an essential part of modern medical practice. We believe all doctors in private or public hospitals should be given complete freedom to provide all these essential services, in the best interests of the American family."[22]

21 N. Y. Times, September 18, 1958.

22 Planned Parenthood News, Spring 1960.

APPENDIX C

Religious Views

A. Protestant

"1. The 1960 General Conference of the Methodist Church[1] approved a report of its Committee on The State of The Church, which stated:

> "We affirm the principle that planned parenthood, practiced in Christian conscience fulfills rather than violates the will of God.
>
> "We take this stand in the conviction that God requires human, responsible choice in every matter of moral decision, including such grave matters as the issues of birth and death. We believe it is the will of God that every child born into the world should be wanted, loved, cared for, and reared with opportunities for physical and spiritual health and growth toward mature personality. Apart from responsible parenthood this is impossible.
>
> "We deplore the fact that opposition to such procedures has injected this issue into the political scene, but we believe that the position herein stated is valid, locally, nationally and internationally. In view of the magnitude of the issue, it must not be evaded."[2]

1. The Methodist Church has over 9,672,000 members. Membership statistics in this and ensuing pages are taken from Yearbook American Churches (1960).

2. Report No. 7, Committee on State of the Church, adopted May 3, 1960.

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2. The Council for the Christian Social Action,[3] United Church of Christ,[4] comprising the Congregational Christian Church and the Evangelical & Reformed Church, stated in 1960:

> "Responsible family planning is today a clear moral duty. We believe that public law and public institutions should sanction the distribution through authorized channels of reliable information and contraceptive devices. Laws which forbid doctors, social workers and ministers to provide such information and service are infringements of the rights of free citizens and should be removed from the statute books. Any hospital which receives public funds should permit doctors to provide all services they consider necessary."[5]

3. This reaffirmed earlier action of each of the merged churches. The Evangelical and Reformed Church, at its General Synod in 1947 expressed itself:

> "* * * as supporting the right of married persons to all appropriate medical aid in the wisest planning of their families, and protests the practice of organized minorities which deny them this right through law or pressure on responsible social agencies."[6]

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3. Cf. Resolution of Federal Council of Churches, Commission on Marriage and the Home (1931); see also "Moral Aspects of Birth Control," published by Federal Council of Churches (1938).

4. This denomination has over 2 million members.

5. *Social Action*, Vol. 26, No. 8, April 1960, pp. 24-27. Planned Parenthood News, Winter, 1960.

6. "Information Service," published by the Bureau of Research & Survey, National Council of Churches, Vol. XXXVII, No. 12, June 14, 1958.

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4. The Congregational Christian Churches, at the General Council in 1931 had stated:

> "We believe in the ideal of marriage as the complete union of one man and one woman, who, forsaking all others, give themselves unto each other. This ideal, we are convinced, cannot be realized without mutuality and freedom resulting from physical and spiritual oneness. We believe in the right of children to be wanted and the right of husbands and wives to assume parenthood. Therefore, we favor the principle of voluntary child-bearing, believing that it sacramentalizes physical union and safeguards the well-being of the family and society."[7]

5. The General Assembly of the United Presbyterian Church[8] meeting in May of 1959 declared:

> "Recognizing that in the wisdom of God Christian marriage is a relationship of love and fidelity which involves both companionship and parenthood, and
>
> "Believing the sexual life within this relationship is given by God for the benefit of his children, and is neither an ethically neutral aspect of human existence, nor an evil which needs to be justified by something else, as for example, by the procreation of children;
>
> "The 171st General Assembly
>
> "Approves the principle of voluntary family planning and responsible parenthood,
>
> "Affirms that the proper use of medically approved contraceptives may contribute to the spiritual, emotional and economic welfare of the family,

7. "Moral Aspects of Birth Control," *supra*, note 3.

8. Approximately 3,100,000 members.

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"Urges the repeal of laws prohibiting the availability of contraceptives and information about them for use within the marriage relationship * * *"[9]

6. The General Assembly of the Presbyterian Church in the United States,[10] meeting in Florida in 1960 adopted a report stating:

"If man and wife are not to be denied mutual fulfilment in the sexual relation and if society is not to be penalized by the unplanned and irresponsible production of children, it will follow that access to information regarding the best methods of birth control is the right of all married couples, and the provision of this information the duty of a responsible society."[11]

7. At the American Baptist Convention of 1959,[12] the following statement was released:

"We commend those who assume responsibility for gaining world acceptance of the simple techniques of planned parenthood and large scale population control. We particularly commend * * * organizations which have taken strong and successful stands for the responsible public administration of legalized methods of birth control and family planning."[13]

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9. Planned Parenthood News, Spring, 1959.

10. Approximately one million members.

11. Assembly Release No. 4, issued April 28, 1960 by Publicity Dept., Presbyterian Church in the United States.

12. Over 155,000 members.

13. Resolutions Adopted by American Baptist Convention, published by Council on Christian Social Progress, 1959.

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8. The 1958 report on "The Family in Contemporary Society" and the report of the Lambeth Conference of Bishops of the Anglican Communion, which includes the Protestant Episcopal Church in the United States,[14] are referred to in the text of the brief. (Point III, A).

9. At its Twentieth Biennial Convention held in 1956 at Harrisburg, Pennsylvania, the United Lutheran Church[15] released the following statement:

> "Husbands and wives are called to exercise the power of procreation responsibly before God. This implies planning their parenthood in accordance with their ability to provide for their children and carefully nurture them in fullness of Christian faith and life. The health and welfare of the mother-wife should be a major concern in such decision. Irresponsible conception of children up to the limit of biological capacity and selfish limitation of the number of children are equally detrimental. Choice as to means of conception control should be made upon professional advice."[16]

10. In 1954, the 95th Synod of the Augustana Lutheran Church[17] stated:

> "A married couple should so plan and govern their sexual relations that any child born to their union will be desired for itself and in relation to the time of its birth. So long as it causes no harm to those

14. Over 3,000,000 members.

15. Approximately 2,294,000 members.

16. Information Service, *supra*, note 6.

17. The Augustana Lutheran Church has approximately 582,000 members.

involved, none of the methods for controlling the number and spacing of children has any special moral merit or demerit. The power to reproduce is His blessing, not a penalty upon the sexual relationship in marriage."[18]

11. In 1930, The American Unitarian Association[19] stated that it:

> "* * * Recommends to its constituent churches and members an earnest consideration of the fundamental social, economic and eugenic importance of birth control to the end that they may support all reasonable efforts in their communities for the promotion of the birth control movement."[20]

12. The Universalist Church,[21] at its General Convention in 1929, issued the following statement:

> "* * * the control of conception is not a theory which we may accept or reject, but is one of the most important facts of modern life, giving man the power to control the future of the race. * * * Birth control is the prevention of conception only and is not the destruction of embryonic life, which is abortion. It involves the conscious control of procreation, with resultant important bearings on social and individual life * * *. Birth control is one of the most practicable means of race betterment. This Convention urges the immediate repeal of such federal and state laws as

18. Information Service, *supra*, note 6.

19. Approximately 110,000 members.

20. Information Service, *supra*, note 6.

21. Approximately 70,000 members.

interfere with the prescription of contraception by physicians, and that * * * socially minded persons establish in every center of population clinics where those needing it may receive conceptive advice under medical supervision."[22]

13. Some Protestant denominations officially maintain that the matter of contraception is a matter for individual conscience. Leaders have stated their own positions, among which the following are illustrative: The Philadelphia Yearly Meeting of Friends (Arch Street) stated:

> "The proper use of approved contraceptives may contribute to the social and economic welfare of the home and to the physical and mental health of parents and children."[23]

James E. Craig, Life Elder and Trustee of the Park Avenue Christian Church, New York, stated:

> "* * * a majority of Disciple[24] ministers believe that birth control is justifiable under certain circumstances. * * * In general, Disciples are content to leave such matters to the individual consciences of husband and wife."[25]

Milton G. Herschel, a Jehovah's Witness[26] Minister and the Director of the Watchtower Bible and Tract Society, stated the position of that group as follows:

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22. Moral Aspects of Birth Control, *supra*, note 3.

23. *Ibid.*

24. There are approximately 2 million Disciples in America.

25. Rosten, Leo, "A Guide to the Religions of America, (Simon & Schuster, 1955), pp. 44, 45.

26. Approximately 227,000 members.

"Jehovah Witnesses regard birth control as an entirely personal matter."[27]

14. Some individual expressions of opinion from important Protestant clergymen follow:

Dr. Harry E. Fosdick (Baptist), Pastor Emeritus, Riverside Church, New York:

> "Birth control is a Godsend. Planned parenthood can assure every infant his birthright of health, care and a warm welcome."[28]

The Reverend G. Bromley Oxnam (Methodist), Bishop of the Washington Area;

> "Christian parents are morally obligated to plan for the coming of their children. The proper spacing of children is an expression of love, and therefore is a religious obligation."[29]

Dr. Norman Vincent Peale, Marble Collegiate Church, New York:

> "It is no more wrong to control scientifically this natural force (human reproduction) than it is to harness and direct any of God's forces in this universe."[30]

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27. "A Guide to the Religions of America," *supra*, note 25, p. 63.

28. "The Churches Speak Up On Birth Control." Planned Parenthood Federation of America, Inc., 1960.

29. *Ibid.* (From a speech to National Family Life Conferences in Cleveland, Ohio.)

30. From a radio statement made over National Broadcasting Co. network, Feb. 25, 1955.

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The Rt. Reverend James A. Pike, Bishop, Episcopal Diocese of California:

> "Men are responsible under God for the conscious direction of every aspect of their lives. The bearing of children should be the result of thoughtful decision and be entered into in a sense of vocation."[31]

Dr. James H. Robinson (Presbyterian), Senior Pastor, Church of the Master, New York;

> "Careful and thoughtful planning to bring children into the circle of the family and the life of this world is essentially a religious conception of reverence for life, and a Christian ideal of stewardship of creative powers, as parents share with God in the continuous unfolding of His divine purpose."[32]

The Reverend Henry P. Van Dusen (Presbyterian), President Union Theological Seminary:

> "Virtually all Protestants believe that sexual union is a divine provision, not only for the propagation of children but also for the deepening and sanctifying of the spiritual union of husband and wife. An increasing number of Protestants favor an intelligent and consecrated use of means to assure the number and spacing of children which will best further the divine intention for the family ('planned-parenthood')."[33]

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31. The Churches Speak Up On Birth Control, *supra*, note 28.

32. *Ibid.*

33. "A Guide to the Religions of America," *supra*, note 25, p. 114.

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B. Jewish

1. The position of Reformed Jews was stated by the Central Conference of American Rabbis as early as 1929, as follows:

> "We • • • urge the recognition of the importance of the control of parenthood as one of the methods of coping with social problems."[34]

This position was reaffirmed in 1959 by the 45th General Assembly of the Union of American Hebrew Congregations, parent body of Reform Jewish Synagogues in the United States and Canada, with over a million members. (See text of the brief Point III, A, 2.)

2. The Rabbinical Assembly representing Conservative Judaism states:

> "Proper education in contraception and birth control will not destroy, but rather enhance, the spiritual values inherent in the family and will make for the advancement of human happiness and welfare."[35]

3. The Rabbinical Alliance of America, the organization of Orthodox Jewish rabbis, explained the position of Orthodox Jews in commenting on a ban on contraceptive advice in New York City hospitals:

> "[The ban] jeopardizes the hallowed American tradition that governmental agencies must • • • never seek to impose on the people they service any kind of sectarian viewpoint.

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34. "Moral Aspects of Birth Control," *supra*, note 3.

35. The Churches Speak Up On Birth Control, *supra*, note 28.

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"The Rabbinical Alliance feels itself impelled to clarify the viewpoint of Orthodox Judaism on birth control practices, which we feel has been erroneously represented. Orthodox Judaism does not condone any artificial birth control measures by the male spouse, under any circumstances. *Only in cases where the health of the female is jeopardized* are certain birth control measures allowed and then only through direct consultation between the medical and rabbinic authorities." (Emphasis supplied)[36]

4. Dr. David H. Wice, Rabbi, Congregation Rodeph Shalom, Philadelphia, has stated:

"The concept of the 'Sanctity of Life' is enhanced, and the 'Holiness of Marriage' is given a new dimension when parenthood is freely elected, when children are born 'wanted' and when family size is determined by considerations of health and well-being for the individual family and for society. Birth control, for centuries obligatory in Jewish tradition for humane reasons, is today also a social imperative."[37]

C. Catholic

The Catholic position is set out in the text of the brief (Point III, A, 3).

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36. New York Times, August 12, 1958.

37. The Churches Speak Up On Birth Control, *supra*, note 28.

APPENDIX D

Representative Statements of Medical Authorities With Respect to Abstinence as an Alternative to Contraception

Child, Charles Gardner, Jr.—"*Sterility and Fertility*" (New York, Appleton, 1922, p. 201):

"We know that for many women further pregnancies are simply out of the question. With such it is but foolish to advise continence, for married life without intercourse is hardly to be realized. * * *"

Crichton-Miller, H. (Director, Tavistock Clinic for Functional Nerve Disease)—"*Medical Aspects of Contraception*" (London, Hopkinson, 1927, p. 182):

"Abstinence involves a strain upon one or both of the mates, which, in some cases, is absolutely incompatible with health and happiness. I am sure there is no experienced doctor in my department of medicine but could cite numerous cases of unhappiness, irritability, neurasthenia, and the like, due to faulty adjustment."

Dawson, Lord, of Penn. (Physician to King George V)—"*Medical Aspects of Contraception*". (London, Hopkinson, 1927):

"Abstention, to be effective, constitutes a demand impossible for the mass of married people to meet. Efforts at such abstention produce a strain harmful to health and temper. If they do not succeed, the minds of husband and wife are troubled by anxieties and conflicts which do them damage, and if they do succeed in preventing conception there eventuates the prevalence of sex excitement, followed by abortive and half-realized satisfaction. Moreover, there is an increased susceptibility of the man and woman to outside sex temptations. Birth control by abstinence is either ineffective or if effective pernicious."

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Ellis, Havelock—"Studies in the Psychology of Sex," Vol. VI. "*Sex in Relation to Society*" (Philadelphia, F. A. Davis Company, 1910, p. 182):

"Krafft-Ebing showed that sexual abstinence could produce a state of general nervous excitement (*Jahrbuch fur Psychiatrie*, Bd. vii, Heft 1 and 2). Schrenck-Notzing regards sexual abstinence as a cause of extreme sexual hyperaesthesia and of various perversions (in a chapter on sexual abstinence in his *Kriminalpsychologische und Psycholathologische* * * * pp. 174-178)."

Goddard, Charles E. (Institute of Public Health: Medical Officer of Health, President London Medical Board)—"*Some More Medical Views on Birth Control*" (New York, Dutton, 1928, p. 131):

"The suggestion that continence is the only remedy, and is all that is required, to me is just foolishness, if not canting nonsense; and I have no patience or sympathy when such a statement is advanced to satisfy a theory which they know is not feasible, is not practicable, especially if applied to young married people, and (as is well known) is not seriously attempted by any class."

Haire, Norman—"*Medical Aspects of Contraception*" (London, Hopkinson, 1927, p. 144):

"In the case of married persons, already habituated to coitus, and living in intimate relationship, with their partners, and so subjected to more or less continued sexual stimulation, prolonged sexual abstinence is usually, I think, definitely harmful."

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Kolman, Sarah R. M.D.,—"*Some Psychiatric Aspects of Birth Control*" (94 American Journal of Psychiatry 317, 326, 1937):

"Any unbiased student must admit that sexual frustration, from whatever source, results in quarrels, unhappiness, infidelity, neurosis, desertion and divorce."

Kleegman, Sophia J., M.D., F.A.C.S., Clinical Professor of Obstetrics and Gynecology, New York University College of Medicine; and Medical Director, the New York State League for Planned Parenthood:, *Therapeutic Abortion, Medical, Psychiatric, Legal, Anthropological and Religious Considerations* (edited by Harold Rosen, Ph.D., M.D., The Julian Press, Inc., 1954 (pp. 255-256)):

"Normal sex life is an important contribution to wholesome marital adjustment. Fear of pregnancy leads to fear of sex life, to anxiety, and to emotional conflict. Every normally fertile couple will need to employ safe methods of contraception for considerable periods of time during their married life. Knowledge of how to do this is psychologically necessary not only for the new mother or the mother of an already established family but for many young married couples as well, especially at the start of their marriage, to enable them to build sound marital relationships based, in large part, on ability to conceive their children in accordance with their development, their strength and their resources."

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MacLeod, Douglas H., M.S., F.R.C.P., F.R.C.S., F.R.C.O.G.; Gynaecological Surgeon, St. Mary's Hospital. Consulting Surgeon, Queen Charlotte's Maternity Hospital. Gynaecological Surgeon, The Royal Marsden Hospital and the Putney Hospital. Hunterian Professor, Royal College of Surgeons of England, 1946. Examiner in Obstetrics and Gynaecology to the University of Cambridge and the Royal College of Obstetricians and Gynaecologists—*Gynecology* (Boston, Little, Brown & Company, 1955, pp. 170-71):

"The obvious way to avoid a pregnancy is by total abstinence, but the impracticability of advising this in all but very few instances makes it relatively useless as a means of birth control. While a few patients will accept such advice without resulting suffering, the majority, while refusing, would in effect suffer in respect of marital harmony if they did abstain. It would be exceptional for one party at least to accept abstinence for any prolonged period, and indeed such acceptance would by many be regarded as abnormal."

Menninger, Karl, M.D., (For qualifications, see Appendix A, p. 17a). *Psychiatric Aspects of Contraception*, Bulletin of Menninger Clinic, Vol. 7, No. 1, January 1943:

"Clinical experience brings us as psychiatrists to the very definite conclusion that while in the lower animals sexual pleasure is primarily a means to an end, in human beings it is not only a means to an end but also a very important end in itself. With a much more elaborate central nervous system and a far more complicated social environment, the human being no longer reacts as animals do in a simple reflex way to the sensory indications of a reproductive opportunity. The impulse for sexual union

travels a long, complicated path and becomes entwined, as Havelock Ellis says, with all the highest and subtlest human emotions and activities, with the refinements of social intercourse in every sphere, with art, with religion, with all the facets of that which we call love between human beings. The thwarting of this means the interference with productivity and creativeness in all spheres and the interference with the harmony of human affection which law, religion and social custom are at such pains to nurture."

Millard, Charles Killick, M.D., D.Sc. President of Society of Medical Officers for Health—*Medical Aspects of Contraception* (London, Hopkinson, 1927, p. 111):

"I feel strongly that where the husband and wife cohabit and are on affectionate terms, complete abstinence from sexual relations is definitely injurious both physically and psychologically. Further, I believe that in the great majority of normal young couples it is so impracticable that sooner or later it would certainly break down. It runs counter to one of the primary and fundamental objects of marriage."

Parshley, H. M. (Professor Zoology, Smith College—*Biological and Medical Aspects of Contraception* (American Conference on Birth Control and National Recovery; National Committee on Federal Legislation for Birth Control, Inc., (Washington, D. C., 1934, p. 16):

"Strong evidence tends to show that *complete* repression of the sexual impulse, is practically impossible; and that such apparent success as is obtained results in the emergence of sex activity in questionable shapes, together with psychological disturbances that often assume serious proportions."

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Reynolds, Edward T., M.D., F.A.C.S., and *Macomber, Donald*, M.D., F.A.C.S.—*Fertility and Sterility in Human Marriage* (Philadelphia, W. B. Saunders Company, 1924, p. 211):

"Complete restraint in a couple who are living together in the daily contacts of marital life is, however, so unnatural that it is almost inevitably followed by disturbances in their sexual organs. In point of fact, it can hardly exist between normal individuals without verging upon the third and most extreme mistake of habit.

"No condition is so harmful to the organs as continued presence of desire without gratification. Any frequent excitation of this condition inevitably leads to chronic and usually severe congestion."

Robinson, William J., M.D. (Late Chief Dept. Genito-Urinary Diseases and Dermatology, Bronx Hospital, New York; Author and Editor)—*Birth Control: or the Limitation of Offspring by Prevenception* (N. Y. Eugenics Publ. Co., 1933, p. 36 f):

"Two remedies" (to effect the limitation of offspring) "are proposed by our reactionary philosophers and sociologists. * * * The second is to abstain—that married people should abstain from sexual relations.

"To give advice which we know is impossible of being followed is the acme of vacuity. But where married people were foolish enough to follow this advice the effects were pernicious.

"For married people to attempt to abstain for any length of time means to lay the foundation for irritability, nervousness, or even genuine neuroses, and cooling or even destruction of the affections. It means more; it very often means driving the husband into the arms of prostitutes with the possible risks of venereal disease."

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Rock, John, M.D. Harvard University Medical School—*The Scientific Case Against Rigid Legal Restrictions on Medical Birth-Control Advice*, reprinted from Clinics, Vol. 1, No. 6, 1943, (J. B. Lippincott Company, pp. 1609-10):

"'*Dangers of Inhibition of the Coital Urge.* Suppression of the coital urge directed towards his wife is possible for the intelligent considerate husband aware of a good reason why she should not become pregnant. But the urge is still there and unless, by appropriate and effective taboos, it can be sublimated into a sexual martyrdom of which few Americans, including all colors and creeds, are capable, it will express itself in any one of the innumerable aberrancies of the primate sex function; for those too are 'natural.' • • • To demand prolonged continence as the only method of contraception from anyone, who is not stoutly bulwarked by the strongest spiritual sanction is to drive that individual to what society has judged criminal, and which, if practiced by any number of those who should prevent pregnancy for shorter or longer periods, for reasons which have been stated, would disrupt our whole moral order • • • Let those who have moral objection to any interference with coitus, except its denial, practice continence, if by so doing they are not driven to release their sex drive into illicit channels • • •. Forced domestic continence would not be good • • • for society."

Rosenau, Milton J. editor, (Professor Emeritus of Preventive Medicine and Hygiene, Harvard Medical School)—Article on "*Contraception*" by *Eric M. Matsner*, M.D. in Preventive Medicine and Hygiene (6th edition, Appleton-Century, 1935, p. 508):

"Abstinence or continence is a theoretical but not a practical method of contraception for married couples.

The doctor who prescribes it should not be disappointed if the prescription is not taken. Total abstention from the coital act in marriage, although a negative contraceptive measure, may have unfortunate psychologic and physiologic effects except in rare instances."

Smith, Hamblin M. (Medical Officer British Prison Service; author of "The Psychology of the Criminal")—*Some More Medical Views on Birth Control* (New York Dutton, 1928, p. 191):

"When marriage is undertaken the difficulty of sublimation is greatly increased. A man and a woman enter into the most intimate relation imaginable, all our customs tending to emphasize the intimacy of the relation.

"Some of the repressed energy can be sublimated, but not all can be so dealt with. * * * The harm which may result varies in degree from transient restlessness and irritability, to the establishment of the most profound psycho-neurosis. All kinds of anti-social conduct may be occasioned in this way."

Stallworthy, John, M.A. (Oxon), F.R.C.S., F.R.C.O.G., Obstetrician and Gynaecologist, Radcliffe Infirmary, Oxford; Examiner in Midwifery and Gynaecology, Oxford University; Director of the Area Department of Obstetrics and Gynaecology, United Oxford Hospitals; *Kenneth Walker*, M.B., F.R.C.S., Emeritus Urologist, Royal Northern Hospital; Andrologist to the Philip Hill Parenthood Clinic, Royal Northern Hospital; *John Malleson*, M.B., B.S.; Clinical Assistant, Obstetric Unit, University College Hospital, London; Hon. Medical Officer to the Clinic for Sexual Disorders, North Kensington Welfare Centre; *Margaret Hadley Jackson*, M.B., B.S., D.R.C.O.G., Obstetric Consultant to the Devon County Council, Medical Officer to the

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Exeter F.P.A. Contraceptive and Subfertility Clinic. With a Foreword by *Sir Eardley Holland*, M.D., F.R.C.S., F.R.C.P., F.R.C.O.G. *Problems of Fertility in General Practice* (London: Cassell and Company Ltd., 1953, p. 138):

"* * * Thus, the physician who recommends abstention should realize that he may be inflicting a burden far greater than would be involved in the mere deprivation of sexual pleasure. He must face the fact that the efforts to act on his advice may produce symptoms of anxiety neurosis, either in the form of functional ill-health, or in disturbances of temper or disposition."

Stone, Hannah M., M.D., Medical Director, Margaret Sanger Research Bureau and Marriage Consultation Center at the Community Church, New York, and *Abraham Stone*, M.D., Associate Clinical Professor of Preventive Medicine, New York University College of Medicine, Director, Margaret Sanger Research Bureau, Vice-President, Planned Parenthood Federation of America, Medical Director, Marriage Consultation Center at the Community Church, New York *A Marriage Manual* (New York: Simon and Schuster, 1953, pp. 105-106):

"What about self-control, doctor? Would it be advisable for people to abstain altogether from sexual relations when a pregnancy is not desired?"

"Continence is occasionally resorted to for the purpose of preventing conception, and I have records of some married couples who had abstained from sexual contact for months and even years at a time on that account. It is certainly the most effective method for avoiding a pregnancy, yet it is one which cannot be advocated or advised as a general practice."

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"But why not, doctor? Is continence harmful?"

"Well, first of all, because continence is not feasible. Normally sexed individuals, living in the intimate daily contacts of married life, find it very difficult to abstain completely from marital relations. Only people who have an unusually high degree of control over their desires, or, what is more generally the case, those who have a very low degree of sexual drive, are able to refrain from sexual contact with their mates for long periods of time.

"Secondly, because prolonged continence in married life is physiologically and psychologically undesirable. When two people who love each other and live together in the close intimacies of marriage attempt to avoid sexual relations, it inevitably gives rise to marked physical stresses and emotional strains, which are very likely to lead to serious physical and sexual disharmonies and marital conflicts. A satisfactory sex life is essential for a satisfactory marital union, and not many marriages can long survive the complete repression of the sexual instinct."

Williams, J. Whitridge (Former Professor of Obstetrics and Gynecology, Johns Hopkins University) *Indications For Therapeutic Sterilization in Obstetrics* (91 Journal of the American Medical Association, 1241, October 27, 1928):

"It may be argued that * * * continence is the true solution" (to the problem of family limitation) "and that if it cannot be attained the matter is out of our hands.

"If men were angels such advice might hold; but even among the most intelligent and well-meaning I hesitate to recommend continence for too long a time, as I know from experience what it means to give advice which may lead to a blasted marriage."

APPENDIX E

Legal Status of Contraception in the United States and Territories

On the next page is a map showing how the various States and territories have treated the dissemination of contraceptives. The map contains four categories, as follows:

Category I (clear)

Jurisdictions in which there is no statute dealing with the dissemination of contraceptives.

Category II (diagonal lines)

Jurisdictions in which the dissemination of contraceptives is subject only to limited regulations such as restrictions against advertising and/or vending machines, or regulation of prophylactics only.

Category III (crossed lines)

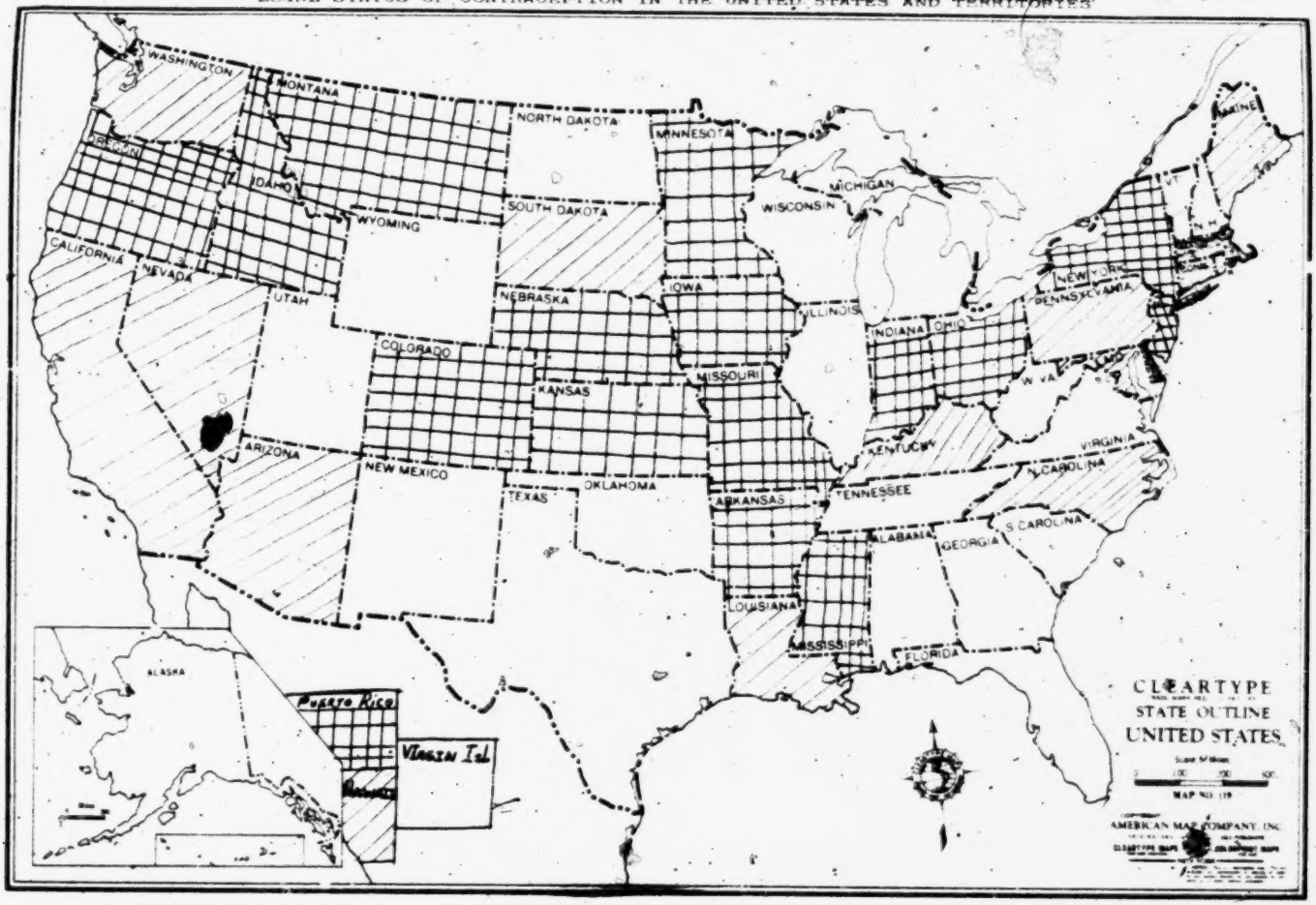
Jurisdictions in which dissemination of contraceptives is permitted only by duly licensed physicians and/or pharmacists.

Category IV (shaded)

Jurisdictions in which the dissemination or use of contraceptives is prohibited.

On the pages following the map there are explanatory notes and statutory citations.

LEGAL STATUS OF CONTRACEPTION IN THE UNITED STATES AND TERRITORIES



3. *Missouri:*

Missouri's statute includes a prohibition against advertising, a clause barring sale or distribution of contraceptive devices, and a clause exempting medical teaching and medical publications. (cf. Kansas, Nebraska) As illustrated in Appendix F several contraceptive services exist within the State.

4. *New Jersey:*

The New Jersey statute prohibits sale, "without just cause" of contraceptive devices. The 1959 case of *State v. Kinney Building Drug Stores, Inc.*, 56 N. J. Super. 37, 151 A. 2d 430 (Essex Co. Ct. 1959) held it unconstitutional in that it did not clearly distinguish legal sales of contraceptives from illegal sales. The case was not appealed. cf. *State v. Tracy*, 29 NJ Super. 145, 102 A(2) 52 (1935); *State v. Kohn*, 42 N. J. Super. 578, 127 A(2) 451 (1956).

Many Planned Parenthood centers exist within the State and one is run on State premises (see Appendix F).

Note to Category IV

Massachusetts:

The Massachusetts statute is a bar to the distribution of contraceptives (not to use). Its scope has been limited so as to exclude druggist' sales of condoms for prophylactic use. *Comm. v. Corbett*, 307 Mass. 7 (1940); *Commonwealth v. Werlinsky*, 307 Mass. 608, 29 N. E. 2d 150 (1940).

Appendix E

Statutes Concerning Contraception

1. Alabama None
2. Alaska None
3. Arizona Ariz. Rev. Stat. Ann (1956) Tit. 13 §213
4. Arkansas Ark. Stat. (1947) Tit. 82 §§944-949, Tit. 82 §§951-954
5. California Cal. Bus. & Prof. Code Ann. (West 1954 Div. 2 Ch. 4 Art. 5 §601; Div. 2 Ch. 9 Art. 9 §§4301-4325
6. Colorado Colo. Rev. Stat. Ann. (1953) §40-9-17, §§66-10-3—66-10-8, §66-10-12
7. Connecticut Conn. Gen. Stat. (1958 revised) Tit. 53 §32, Tit. 54 §196
8. Delaware Del. Code Ann. (1953) Tit. 16 §§2501-2504
9. District of Columbia No specific District of Columbia statute
10. Federal Statutes 18 U. S. C. §§1461, 1462; 19 U. S. C. §1305, 21 U. S. C. §352
11. Florida None
12. Georgia None
13. Hawaii Hawaii Rev. Laws (1955) Tit. 21 §455-73, Tit. 31 §§302A-1—302A-3
14. Idaho Idaho Code Ann. (1948) Tit. 18 §603, Tit. 39 §§801-810
15. Illinois None cf. Ill. Rev. Stat. C. 127 §55.13
16. Indiana Ind. Ann. Stat. (Burns Supp. 1959) Tit. 10 §§2803, 2804, Tit. 9 §601
17. Iowa Iowa Code Ann. (1950) Tit. 35 §§725.5—725.10

Appendix E

18. Kansas Kan. Gen. Stat. Ann. (1949) Ch. 21 §1101

19. Kentucky Ky. Rev. Stat. (1959) Tit. 18 §§214.190-214.270

20. Louisiana La. Rev. Stat. Ann. (1950) Tit. 14 §88

21. Maine Me. Rev. Stat. Ann. (1954) Ch. 134 §11, Ch. 25 §114

22. Maryland Md. Ann. Code (1957) Art. 27 §41

23. Massachusetts Mass. Ann. Laws (1956) Tit. 1 §§20, 21

24. Michigan Mich. Stat. Ann. (1956) Tit. 14 §§353(1)-353(5), Tit. 28 §229.40, Tit. 15 §3782

25. Minnesota Minn. Stat. Ann. (1947) Ch. 617 §§25, 26

26. Mississippi Miss. Code Ann. (1956) Tit. 11 §2289

27. Missouri Mo. Rev. Stat. (1949) Tit. 38 §563.300

28. Montana Mont. Rev. Codes Ann. (1947) Tit. 94 §3609, Tit. 94 §§3616-3619

29. Nebraska Neb. Rev. Stat. (Reissue 1956) Ch. 28 §423, Ch. 71 §§1104-1114

30. Nevada Nev. Rev. Stat. (1957) Tit. 16 §202.190, Tit. 16 §§202.210-202.230

31. New Hampshire None

32. New Jersey N. J. Stat. Ann. (Supp. 1955) Tit. 2A §170-76

33. New Mexico N. M. Stat. Ann. (1953) Ch. 12 §3-7

34. New York N. Y. Pen. Law Art. 106 §§1142, 1143, 1145

35. North Carolina N. C. Gen. Stat. (1935) Ch. 14 §194

36. North Dakota None

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37. Ohio Ohio Rev. Code Ann. (Page 1953) Tit. 29 §§2905.32-2905.37

38. Oklahoma None

39. Oregon Ore. Rev. Stat. (1955) Tit. 36 §§435.010-435.110

40. Pennsylvania Pa. Stat. Ann. (Purdon 1945) Tit. 18 §4523

41. Rhode Island None

42. South Carolina None

43. South Dakota S. D. Code (1952) Tit. 13 §1726

44. Tennessee None

45. Texas None

46. Vermont Vt. Rev. Stat. (1947) Tit. 36 §7323

47. Virginia None

48. Utah Utah Code Ann. (1953) Tit. 58 §§19-1(f), 19-2—19-10.

49. Washington Wash. Rev. Stat. (1952) Tit. 9 §68.030, Tit. 18 §81.010(4), Tit. 18 §§81.020, 81.025, 81.030, 81.040, 81.050, 81.060, 81.065, 81.070, 81.080

50. West Virginia None

51. Wisconsin Wis. Stat. (1955) Tit. 15 §151.15

52. Wyoming None

53. Virgin Islands None

54. Puerto Rico P. R. Laws Ann. (1955) Tit. 33 §§1051, 1052, Tit. 24 §§201-203, Tit. 10 §315.

APPENDIX F

Location of Planned Parenthood and Public Health Contraceptive Services in the United States

The map in this Appendix shows the location of contraceptive services rendered by Planned Parenthood affiliates and public health agencies. The map does not show those contraceptive services rendered by such groups as hospitals, private physicians, other private agencies and the like.

The dots in the states marked with horizontal lines indicate the locations where contraceptive services are rendered by the Planned Parenthood Affiliates:

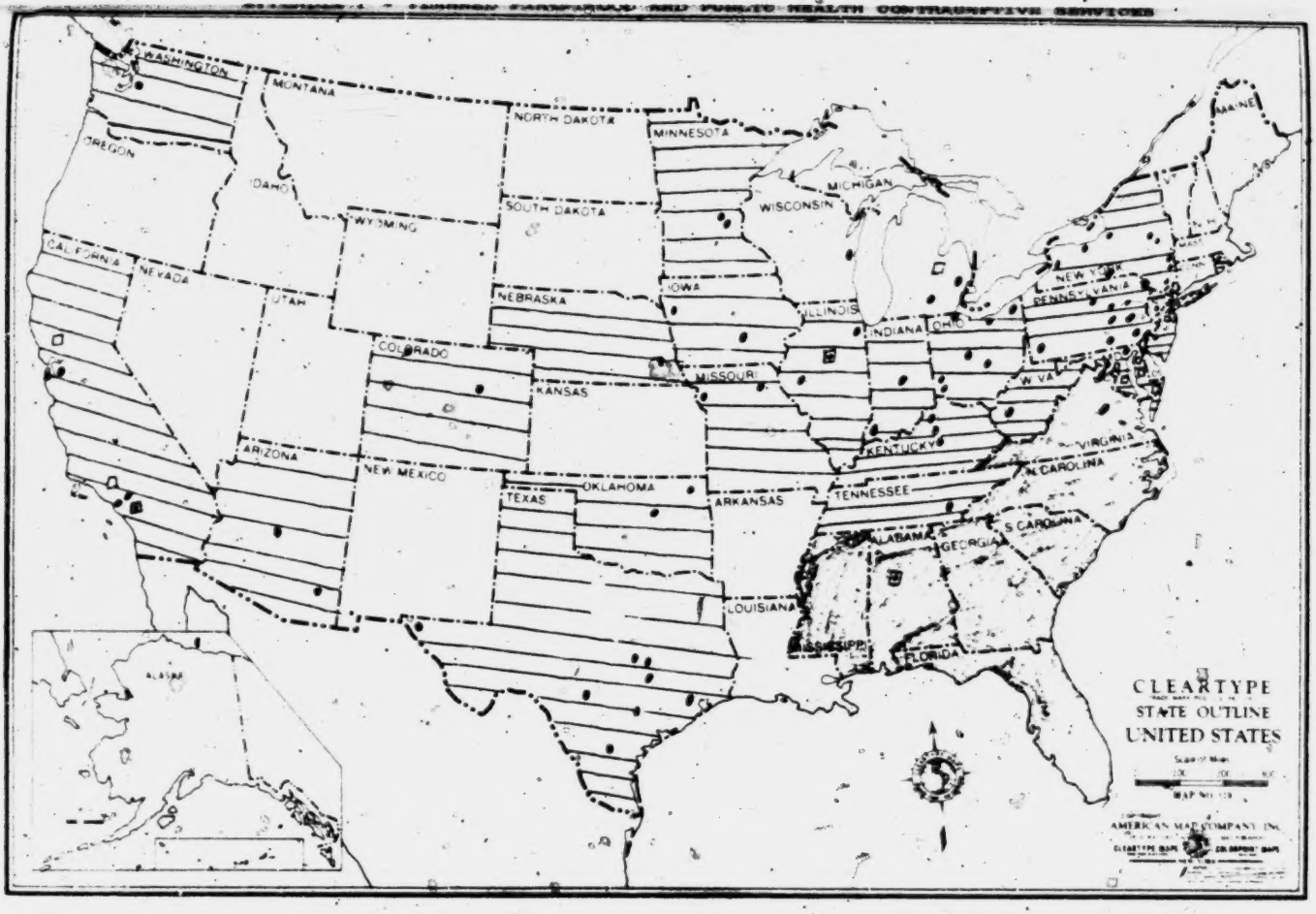
Alabama: Birmingham; Arizona: Phoenix, Tucson; California: Los Angeles, Oakland, Pasadena, San Francisco, Whittier; Colorado: Denver; Delaware: Wilmington; District of Columbia; Illinois: Champaign, Chicago, Springfield (Referral service to private physicians); Indiana: Evansville, Indianapolis; Iowa: Des Moines, Sioux City; Kentucky: Berea, Lexington, Louisville; Maryland: Baltimore, Silver Spring; Michigan: Ann Arbor, Detroit; Minnesota: Minneapolis, St. Paul; Missouri: Kansas City, St. Louis; Nebraska: Omaha; New Jersey: Asbury Park, Camden, Englewood, Morristown, Newark, Paterson, Plainfield, Princeton, Westfield (Referral service to private physicians); New York: Albany, Babylon, Binghamton, Brooklyn, Buffalo, Far Rockaway, Huntington, Jamaica, Kingston, Mineola, Mount Kisco, Mount Vernon, Newburgh, New York City, Niagara Falls, Port Chester, Poughkeepsie, Rochester, Schenectady, Syracuse, Yonkers; Ohio: Cincinnati,

Appendix F

Cleveland, Columbus, Hamilton, Springfield, Toledo, Youngstown; Oklahoma: Oklahoma City, Tulsa; Pennsylvania: Easton, Lancaster, Philadelphia, Pittsburgh, Reading, Scranton, Stroudsburg, Wilkes-Barre, York; Rhode Island: Providence; Tennessee: Chattanooga; Texas: Austin, Dallas, El Paso, Ft. Worth, Houston, San Angelo, San Antonio, Waco; Virginia: Richmond; Washington; Seattle; West Virginia: Parkersburg; Wisconsin: Milwaukee.

(See *List of Affiliates*, published by Planned Parenthood Federation of America, Inc., August, 1960)

The shaded areas show the states with public health contraceptive services.


WASHINGTON
MONTANA
NORTH DAKOTA
MINNESOTA
MAINE
OREGON
IDAHO
SOUTH DAKOTA
MICHIGAN
WISCONSIN
WYOMING
CALIFORNIA
NEVADA
UTAH
NEBRASKA
IOWA
ILLINOIS
INDIANA
OHIO
NEW YORK
PENNSYLVANIA
COLORADO
KANSAS
MISSOURI
W. VA.
KENTUCKY
VIRGINIA
ARIZONA
NEW MEXICO
OKLAHOMA
TEXAS
ARKANSAS
TENNESSEE
N. CAROLINA
ALABAMA
GEORGIA
S. CAROLINA
LOUISIANA
MISSISSIPPI
FLORIDA
ALASKA
CLEARTYPE
STATE OUTLINE
UNITED STATES
AMERICAN MAP COMPANY, INC.

APPENDIX G

Attached as Appendix G is a "Selected Bibliography of Contraception, 1940-60, edited by Christopher, Tietze, M. D., published by the National Committee on Maternal Health, Inc in 1960.